

Biography
of
the
Rev.



*The Judiciary and the Bar
of New England for the
Nineteenth Century. . . .*

MEMOIRS
OF THE
JUDICIARY AND THE BAR
OF
NEW ENGLAND
FOR THE NINETEENTH CENTURY

WITH
A HISTORY OF THE JUDICIAL SYSTEM OF NEW ENGLAND

BY
CONRAD RENO, LL. B.

THE CENTURY'S RECORD OF THE LIVES OF DISTINGUISHED MEMBERS
OF THE LEGAL PROFESSION

PUBLISHED UNDER EDITORIAL SUPERVISION OF

LEONARD A. JONES, A. B., LL. B.

AUTHOR OF THE FOLLOWING TREATISES: MORTGAGES OF REAL PROPERTY; MORTGAGES OF PERSONAL PROPERTY; CORPORATE BONDS
AND MORTGAGES; PLEDGES AND COLLATERAL SECURITIES; THE LAW OF LIENS; THE LAW OF REAL PROPERTY;
FORMS IN CONVEYANCING; THE LAW OF EASEMENTS; AND JUDGE OF THE COURT OF
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EMPLOYERS' LIABILITY ACTS, ETC., ETC.

ASSISTED BY MANY EMINENT NEW ENGLAND JUDGES

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VOLUME I

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A History of
The Judicial System of New England.

BY

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THE JUDICIAL SYSTEM OF NEW ENGLAND.

CHAPTER I.

EARLY FORMS OF TRIAL AND PUNISHMENT.

The Pilgrims and Puritans were familiar with the forms of civil and criminal procedure which prevailed in England in the early part of the seventeenth century, and

Section 1. upon reaching the shores of
Brief Survey. New England, they adopted and enforced the main features of the English system of trials, punishments and judicial proceedings. There was, however, no slavish imitation of old-world methods. Only such laws and customs were enforced as seemed adopted to their new surroundings and condition, and many improvements and innovations were introduced in practice. Trial by ordeal and trial by battle were never allowed in the United States,¹ and in general the laws were less harsh and more humanely administered than in England.²

The number of capital crimes was greatly lessened, and the death penalty imposed for only the greatest crimes. At a time when upward of one hundred crimes and offences were punishable with death in England, and

the country was red with blood, the Puritans of Massachusetts reduced the number of such crimes to fifteen. In the Body of Liberties of 1641, Article 94, the following crimes were punishable with death: (1) Worshipping any other God but the Lord God; (2) witchcraft, a witch being defined as a person who "hath or consulteth with a familiar spirit"; (3) blasphemy; (4) wilful murder; (5) slaying a person suddenly, in anger or cruelty of passion; (6) slaying a person "through guile, either by poisoning or other such devilish practice"; (7) bestiality; (8) sodomy; (9) adultery; (10) stealing "a man or mankind"; (11) perjury, "wittingly and of purpose, to take away any man's life"; (12) treason; (13) rebellion; (14) insurrection; (15) invasion.

Judge Zephaniah Swift of Connecticut, writing in 1796, stated that there were then one hundred and seventy-six crimes punishable with death in England, without benefit of clergy, and sixty-five where the benefit of clergy was allowed; and that in Connecticut

¹ Brown, J., in *Hollen v. Hardy*, 169 U. S. 366, 396;
² Hale's *History Common Law*, 188.

² Hubbard's *New England* (ed. 1848), p. 159.

at the same time there were only six capital crimes, namely, treason, murder, rape, the crime against nature, mayhem, and arson, where life is endangered.¹

Lord Macaulay's witty criticism of the Puritans to the effect that they objected to bear-baiting not because it gave pain to the bear, but because it gave pleasure to the spectator, seems undeserved, at least as applied to the Puritans of Massachusetts. In 1641 two laws were enacted for the special protection of the brute creation, and were included in the hundred fundamental laws known as the Body of Liberties. Article 92 expressly declared that: "No man shall exercise any tyranny or cruelties toward any brute creature which are usuallie kept for man's use." And Article 93 further provided that: "If any man shall have occasion to leade or drive cattel from place to place that is far of, so that they be weary, or hungry, or fall sick, or lambe, it shall be lawful to rest or refresh them for a competent time, in any open place that is not corne, meadow, or inclosed for some peculiar use."

Persons accused of felony were allowed counsel and witnesses.² Trial by jury was the usual form of trial, both in civil and in criminal matters. In prosecution for crime, an indictment by a grand jury before the trial by petty jury was customary.

In some of the early trials in Plymouth Plantation, all of the freemen seem to have participated. At the trial of Lyford and Oldham in 1624 for plotting against the Government of Plymouth Plantation, Governor Bradford states that the governor "called a court

and summoned the whole company to appear."³

At this trial the governor sat not only as a judge, but acted also as the prosecuting attorney, and it was largely, if not entirely, through his exertions that a conviction was obtained.

The original Charter was framed for the purposes of a trading and land corporation, and not for the purpose of establishing a government. The Mayflower passengers, however, paid very little attention to this fact, and early created a court, consisting of the governor for the time being, and a certain number of assistants. The number was only one assistant at first, but in 1624 it was increased to five, and afterwards to seven.⁴ This court administered both civil and criminal law, and imposed fines, whippings and punishments of different kinds, without doubt of their authority, until a capital crime was perpetrated. The Charter did not in express terms confer the power of imposing the penalty of death, but self-preservation required the exercise of this power.⁵

In 1630, John Billington, who had always proved an unruly member of the community, waylaid John Newcomen, against whom he had a grudge on account of an old quarrel, and shot him with his gun. Billington was therefore arraigned for murder by a grand jury, was tried and found guilty by a petty jury, and was sentenced to be hanged.

**Section 2.
Trials of
John
Billington.**

Billington objected to this extreme penalty of the law, on the ground that the court had no power to impose capital punishment. The governor and his assistants hesitated and held the matter under advisement for some time, and consulted with Governor Winthrop, who

¹ Swift's *System of Conn. Laws*, vol. 2, pp. 292, 296.

² Swift's *System of Conn. Laws*, vol. 2, pp. 388, 399; Brown, J., in *Holden v. Hardy*, 169 U. S. 386.

³ Bradford's *History Plymouth Plantation*, p. 216 (ed. 1898).

⁴ Bradford's *Hist. Plymouth*, p. 187 (ed. 1898).

⁵ Hutchinson's *Mass. Bay*, II, 3.

had then recently arrived from England, with the Charter of 1629, which conferred greater governmental powers. Winthrop's opinion was that "he ought to dye and the land to be purged from blood." Billington was accordingly hung, and this was the first execution which took place under judicial proceedings in the infant colony.¹

John Billington, although he came over in the Mayflower, gave early indications of his desperate character. In March, 1621, he committed the first offence for which punishment was inflicted in the Colony. He refused to obey the lawful commands of Captain Miles Standish, and had the temerity to treat him with contempt and opprobrium. For this unseemly conduct he was "convened before the whole company," and was sentenced to lie in a public place with his neck and heels tied together. In June, 1625, Governor Bradford characterized Billington as "a knave, and so will live and die," and subsequent events justified the governor's opinion of the man.²

As the great criminal of Plymouth Plantation, we are indebted to Billington for settling many of the forms of criminal procedure and punishment.

Although trial by battle was not permitted by law in the colony, there was at least one memorable occasion on which a notable personage expressed the desire to settle his dispute

in this form. In 1631, Thomas

Section 3. Dexter brought an action for
Trial by assault and battery against
Battle. John Endicott of Salem. The
Dexter v. case was tried at Boston, and
Endicott. the jury returned a verdict of ten pounds dam-

ages against Endicott: which so angered the meek ruler of Salem that he exclaimed: "If it were lawful to try it at blows, and he a fit man for me to deal with, you should not hear me complain."³

Wager of Battle was allowed in England until 1818, when it was abolished by statute of 59 Geo. III. c. 46. *Ashford v. Thornton*, 1 Barn. & Ald., 405, decided in 1818, in the King's Bench, was the last case in which this mode of trial was recognized as valid. The appellee in an appeal of death pleaded "Not guilty; and I am ready to defend the same by my body." And thereupon taking his glove off, he threw it upon the floor of the court. (P. 409.) The appellant declined to accept this mode of trial, and the appellee was accordingly discharged.

Banishment was a favorite form of punishment. It sometimes was carried to the extreme of reshipment of the culprit to England, as in the case of the rebel,

Thomas Morton. But this was expensive and troublesome, and the usual sentence was

Section 4.
Banishment.
Tying by Neck
and Heels, etc.

merely expulsion from "the place," or from "the limits of this patent," before a day named. In 1624, Lyford and Oldham were sentenced by Governor Bradford of Plymouth Plantation to be "expelled the place," upon conviction of sedition and plotting against the government.⁴ In 1631, Thomas Walford, of Charlton, a smith by trade, was fined ten pounds for his contempt of authority and confronting officers, etc., and was ordered by Governor Winthrop to depart with his wife "out of the limits of this patent before the 20th day of October next, under

¹ Bradford's History Plymouth, pp. 329, 330 (ed. 1898).

² Savage's Winthrop, vol. 1, p. 61.

³ Hubbard, p. 101.

⁴ Savage's Winthrop, vol. 1, p. 43.

⁵ Goodwin's Pilgrim Republic, p. 160.

⁶ Savage's Winthrop, p. 64.

⁷ Bradford's History, p. 219 (ed. 1898).

pain of confiscation of his goods." Whether his punishment was increased or diminished by his wife's company, does not clearly appear, though it does appear that in 1656 one Jane Walford was accused of witchcraft, but defended herself successfully and afterwards recovered damages from her accusers.¹

In 1633, Captain Stone was lashed and fined one hundred pounds for calling one of the magistrates (Mr. Ludlow) "Just Ass" for "Justice."² The most illustrious victim of this form of punishment was Roger Williams, who was banished from the Colony of Massachusetts in 1635, as "a disturber of the peace, both of the church and Commonwealth."³

Tying the culprit by his neck and heels was usual for minor offences. John Billington set the fashion upon this matter in March, 1621. In June, 1621, Edward Dotay (or Dotan) and Edward Lister, two young men of hot blood, indulged in the first duel at Plymouth. Neither was seriously injured; but the authorities were outraged and summoned the duellists to appear before the whole company, who ordered that the offenders have their heads and feet tied together, and remain in this condition twenty-four hours without food.⁴

The stocks were much in request by the authorities. The case of Edward Palmer illustrated the danger of making stocks too uncomfortable. In 1639 Palmer made some stocks for Boston, for the wood work of which he charged one pound, thirteen shillings and seven pence. The General Court solemnly decided this charge to be extortionate, and fined poor Palmer five pounds, and ordered him to be "set an hour" in his own stocks.

¹ Savage's Winthrop, p. 64.

² Hubbard, p. 156.

³ Hubbard, 202.

⁴ Savage's Winthrop, I, 204.

⁵ Goodwin's Pilgrim Republic, pp. 160, 161.

His fine was afterwards reduced to ten shillings; but he seems to have had the honor of being the first occupant of these stocks.⁵

The wearing of a cleft stick upon the tongue was considered an appropriate punishment for one who indulged in the pastime of slander. In 1638 the wife of Thomas Oliver of Salem was convicted of slandering the elders of the church, and was accordingly sentenced to carry her tongue in a cleft stick for half an hour.⁶ It is not known whether the stick was of oak or of hickory; but it is probable that the elders of the church had a hand in its manufacture.

Whipping was also common, with a saving in favor of any true gentleman. It was provided in 1641 by Article 43 of the Massachusetts Body of Liberties that:

"No man shall be beaten with above forty stripes, nor shall any true gentleman, nor any man equal to a gentleman be punished with whipping, unless his crime be very shamefull, and his course of life vitious and profligate."

Degradation of rank or title was occasionally imposed. In 1631, Mr. Josias Plaistowe and his two servants, upon conviction of stealing four baskets of corn from Chickatabot and his Indians, was degraded from his title of gentleman, and it was ordered that he should subsequently be called by the name of Josias, without, as formerly, the prefix Mr. He was also directed to return eight baskets of corn to the Indians and fined five pounds, while his servants were let off with a whipping.⁷

In 1641 it was ordained by the Massachusetts Body of Liberties, Article 46, as follows:

"For bodilic punishments we allow amongst

**Section 5.
Whipping.
Degradation
of Rank.**

¹ Savage's Winthrop, II, 85.

² Felt's Salem, 118.

³ Savage's Winthrop, I, 346.

⁴ Savage's Winthrop, p. 74.

us none that are inhumane, barbarous, or cruel."

Hanging was the usual form of capital punishment.

Burning at the stake was very rarely practised by the whites, although it was practised upon them by the Indians. In

Section 6. 1749, however, a negro named
Cruel Phillis was burned in Charles-
Punishments town for poisoning his master.
Prohibited.

His co-conspirator and accessory, also a negro, named Mark, was hung in irons upon a gibbet at the same time.¹

The only instance in New England of the horrible punishment of pressing to death, occurred during the phrensy of the witchcraft trials at Salem in 1692. After many persons had been convicted and hung, Giles Corey, an octogenarian of Salem Farms, was put on trial. Realizing that he could not escape conviction, and wishing to save his property for his children, he stood mute, and refused to plead either guilty or not guilty, in order to prevent a forfeiture to the king if he were convicted of this felony. The special court of Oyer and Terminer which had been commissioned by Governor Phips to try these cases, thereupon imposed this frightful form of torture, to which he succumbed on September 19, 1692.²

In 1641, shortly before the adoption of the Body of Liberties, the question of the power of a magistrate to exact a confession from one accused of a capital crime, was much discussed. Although there was some difference of opinion upon this subject, the general view of the magistrates and elders was that an examination under oath or by torture was not lawful; but where there was one witness or strong pre-

sumptions against the accused, the magistrate could examine him strictly, and compel an answer, though it imperiled his life; and where there was only slight suspicion against him, the magistrate ought not to press him to answer, but allow him to remain silent, and to call for his accusers.³

Torture in a mild form and in exceptional cases was allowed by the early laws of Massachusetts. In the Body of Liberties of 1641, Article 45, it was enacted that: "No man shall be forced by torture to confesse any crime against himselfe nor any other, unless it be in some capitall case where he is first fullie convicted by clear and sufficient evidence to be guilty; after which if the cause be of that nature that it is very apparent there be other conspirators, or confederates with him, then he may be tortured, yet not with such tortures as be barbarous and inhumane."

A very peculiar case of posthumous punishment occurred in Rhode Island in 1707. A slave in Kingston, having murdered his master's wife, drowned himself. The Rhode Island Assembly ordered that his head, legs and arms should be hung up in some public place near Newport, and his body burnt to ashes.⁴

The Forefathers were not lacking in ingenuity in devising punishments to fit the crimes, as may be inferred from the preceding list, which is not exhaustive.

Ear-cropping and branding were also in vogue. In order to identify the crime as well as the criminal, it was customary to brand adulterers with the letter A; burglars with the letter B; forgers with the letter F; and incestuous persons with the letter I.

The principle of the habitual criminal acts

¹ Mass. Hist. Col. (2d series), vol. 2, p. 166.

² Washburn's Jud. Hist. Mass. p. 142.

Barry's Hist. Mass. (2d ed.), p. 88.

Hutchinson, vol. 11, p. 60.

³ Savage's Winthrop, 11, 56.

⁴ Arnold. Hist. R. I., 11, 29.

of recent times was recognized and enforced by the Court of Assistants in Massachusetts as early as 1633. In that year Governor Winthrop informs us that Robert Cole "having been oft punished for drunkenness," was sentenced to wear a red D about his neck for a year.¹

Benefit of clergy was allowed in Massachusetts as late as 1773. James Bell having been convicted of manslaughter in the Superior Court at Boston, in March, 1773, pleaded the benefit of clergy, and was discharged with merely a hand burning. It was also allowed for burglary in 1770, and the burglars suffered only burning in the hand.²

The inviolability of the person was in general recognized and preserved, in the judicial systems of England and New England. It

**Section 7.
Inspection of
the Person.
Witchcraft,
Divorce,
Personal
Injuries.**

was only in exceptional cases, based upon special and peculiar grounds, that the courts could compel an inspection of the person, either in criminal or in civic matters. Nearly all of these cases were founded upon ancient practice of a barbarous nature, and some of them were never introduced or adopted in this country.

In the English trials for witchcraft an important feature was the compulsory inspection of the person of the prisoner for witch-marks. The belief was general and was also adopted by the courts, that every witch had a familiar spirit or devil's imp, which received nourishment at least once in twenty-four hours from the body of the witch. A mole or a wart or even a flea bite was often found to be an imp's

test, and was a most damaging piece of evidence against the accused. The purpose of the inspection was to discover any mark of a preternatural nature, in order to show that the accused was in league and covenant with the devil and had sold himself, body and soul, to the devil.

This inspection of the witch's person was also practised in New England, at Boston, Salem and elsewhere. In the case of Margaret Jones, who was tried at Boston in 1648, before Governor Winthrop and the Assistants, her body was examined; but where and by whom the inspection was made do not appear.³

At the Salem witchcraft trials in 1692, when the accused was a woman, the search for witch-marks was made by a special jury of nine persons, consisting of one man, a physician, and eight women. This jury reported the result of the search to the Court.⁴ When the accused was a male, the examination seems to have been conducted by the same jury which tried him.⁵

In criminal trials the person of the accused is now protected from examination by constitutional provisions to the effect that no person shall be compelled to furnish evidence or to be a witness against himself.⁶

In divorce suits the courts of this country, as well as of England, have exercised the power of compelling a party to submit his or her person to inspection by surgeons or physicians in order to determine the question of impotence. When impotency is a ground of divorce, this power is necessary to enable the courts to exercise jurisdiction in divorce, and it is founded upon the interest which the public,

¹ Savage's Winthrop, I, 149.

² Washburn's Jud. Hist. Mass, p. 194.

Quincy's Mass. Reports, 83 note.

³ Hutchinson's Hist. Mass. (3d ed.), 888 note.

⁴ Savage's Winthrop, II, 397.

⁵ 2 Hutchinson, 59 note, 9d ed.

⁶ Washburn, 143.

⁷ Emery's Case, 107 Mass. (72).

State v. Nowell, 38 N. H. 314.

Counselman v. Hitchcock, 142 U. S. 547.

as well as the parties, have in the marriage relation.¹

In suits for personal injuries occasioned by the defendant's negligence, an inspection of the plaintiff's person by surgeons or physicians acting on behalf of the defendant, has not until recent years been compelled by the courts. It was in 1868 that the first compulsory order for such an examination of the plaintiff was made in this country, and none has ever been made in England.² This rule has since been adopted in some of the Western and Southern States.³ The penalty for non-compliance does not extend to fine or imprisonment, as it is not a contempt of court; but merely to a dismissal of the action, or a stay of trial.

The better rule, however, seems to be that the courts, in the absence of a special statute conferring this power, have no authority to compel a physical examination in personal injury suits. It is not a matter of public interest, such as divorce, and the danger of fraud and imposition may be prevented in other ways, without invading the sacredness of the person. If the plaintiff unreasonably refuses to permit an examination, the fact may be shown at the trial and considered by the jury in reaching a verdict.⁴

Section 8.
Inspection by
a Jury of
Matrons.

The jury of matrons to determine the question of pregnancy of a widow, was the only case known to the common law of England in which women were allowed to take part in the administration of justice,

either as judges, jurors, attorneys, solicitors or barristers.⁵ This jury was permitted by the common law of England when a man died without children, and his wife claimed to be with child; in which case the heir at law or devisee was allowed a writ to inspect her in order to protect his rights to the estate. The jury of matrons were empanelled by the sheriff, and if they found upon due inspection that she was pregnant, she was kept under restraint until delivered.⁶ This writ has been issued in England in quite recent times;⁷ but no instance is known of its ever being issued in the United States. It seems safe to affirm that no jury of matrons ever sat upon an afflicted widow in New England; and that this part of the English-common law was not adopted here,⁸ though, in 1795, Judge Swift of Connecticut naively and cautiously remarked that "in this State there has *hitherto* been no occasion to adopt this law."⁹

The nearest approach to a jury of matrons in this country probably occurred in the case of Jane Baldwin of Mount Wollaston, Massachusetts. Joh Tiler having confessed in 1637 to an attempt to have carnal knowledge of the body of said Jane, she was examined or searched as Governor Winthrop states by "women," who "found no act committed."¹⁰ It does not appear how many women took part in this inspection, nor whether they were matrons, nor whether they were duly empanelled.

The devilish delusion known as witchcraft ravaged England, France, Germany, Spain,

¹ Le Barron v. Le Barron, 35 VI. 365;

Devenbagh v. Devenbagh, 5 Paige, 354;

Union Pacific Ry. v. Botsford, 141 U. S. 259, 252;

Briggs v. Morgan, 8 Phillips, 325.

² Walsh v. Sayre, 82 How. Pr., 334 (1868).

³ Schroeder v. Chicago Ry., 47 Iowa, 373,

Atchison Ry. v. Thul, 29 Kans. 466;

Missouri Pacific Ry. v. Johnson, 72 Texas, 35;

Richmond Ry. v. Childress, 82 Georgia, 719.

⁴ Union Pacific Ry. v. Botsford, 141 U. S. 259,

McQuigan v. Delaware Ry., 129 N. Y. 50;

Parier v. Easley, 102 Illinois, 375.

⁵ Gray, C. J., in Robinson's Case, 131 Mass. 376, 377.

⁶ 1 Blackstone's Commentaries, 456.

⁷ In re Blackmore, 14 Law Journal (N. S.), 338.

⁸ Gray, J., in Union Pac. Ry. v. Botsford, 141 U. S. 253.

⁹ Swift's System, vol. 1, p. 208.

¹⁰ Savage's Winthrop, II. 436.

Italy, Switzerland and Sweden in the sixteenth and seventeenth centuries.

**Section 9.
Witchcraft
Trials.
Hale and
Blackstone.
Hopkins's
Water-Test.**

Thirty thousand persons were executed in Great Britain, seventy-five thousand in France, and one hundred thousand in Germany. The belief in the existence of witches was general among all classes of people, clergymen, judges, lawyers and doctors—the educated as well as the ignorant. In England, Sir Matthew Hale and Sir William Blackstone are well known instances of this opinion. In 1662, at the trials of Rose Cullender and Amy Denny upon this charge the former declared:

"That there were such creatures as witches, he made no doubt at all; for 1st, the Scriptures had affirmed so much; 2d, the wisdom of all nations had provided laws against such persons, and such had been the judgment of this kingdom."¹ They were found guilty and hung.

Blackstone writing in his *Commentaries* many years after the belief had spent its force, states: "To deny the possibility, nay, actual existence of witchcraft and sorcery is at once flatly to contradict the revealed word of God in various passages in both the Old and New Testament."²

During the second quarter of the seventeenth century, witches were hung by the thousands in England. Matthew Hopkins acted as Witch-Finder-General, and became famous for his methods of searching and watching persons accused, or even suspected, of witchcraft. He also invented a water-test for the detection of witches, which was supposed to be infallible. If the accused floated on the surface of the

water, she was surely a witch, because the water refused to receive her into its bosom. The reason was thus explained by the most learned fool of his century, King James I of England: "It appears that God had appointed (for a supernatural sign of the monstrous impiety of witches) that the water shall refuse to receive them in her bosom that have shaken off them the sacred water of baptism and wilfully refused the benefit thereof."³ The only conclusive evidence of innocence was drowning, and many persons probably saved their necks by suffocation in the water.

The water-test for witchcraft was also tried in the case of Mercy Disbrough of Compo in Fairfield, Connecticut, in September, 1692, and four witnesses swore that although she was bound hand and foot and one of them tried to press her down, she "swam like a cork." She was found guilty, but apparently was not executed. Goody Miller, Elizabeth Clawson and Mrs. Staples were also tried at this time for familiarity with the devil, but were acquitted.⁴

In New England the executions for witchcraft numbered only thirty-two. Twenty persons suffered death at Salem in 1692, and the other twelve were executed elsewhere in Massachusetts and in Connecticut. In the *Body of Liberties of 1641*, Article 94, section 2, a witch is defined as a man or woman "who hath or consulteth with a familiarspirit," and the penalty prescribed by the same section was death.

**Section 10.
Witch Trials
at Hartford,
Boston and
Portsmouth.**

The first person to suffer death for witchcraft in New England was a woman of Windsor, Connecticut, whose name is now unknown, who was arraigned and executed at Hartford

¹ Hale's *Pleas of the Crown*, ch. 33, Appendix to Jefferson's (Va.) Reports, 141, 142.

² 4 Blackstone, 61.

³ Quoted in Savage's *Winthrop*, II, 369.

⁴ Sanford's *Hist. Conn.*, 101 (1887).

in 1646 or 1647.¹ The details of her trial are lacking and Dr. Trumbull in his *History of Connecticut* says that "after the most careful researches, no indictment of any person for that crime, nor any process relative to that affair can be found."

The trial of Margaret Jones at Boston in 1648 was historic. It occurred before Governor Winthrop, Deputy Governor Dudley, and the following assistants: John Endicott, Richard Bellingham, Richard Saltonstall, Increase Nowell, Simon Bradstreet, William Hibbins, John Winthrop, jr., and William Pynchon. She was compelled to submit her person to a search for witch-marks, and Governor Winthrop says the search disclosed "an apparent tent in her secret parts as fresh as if it had been newly sucked; and after it had been scamed, upon a forced search, that was withered, and another began on the opposite side." She was also watched according to the method discovered by the great Witch-Finder-General Hopkins of England, whereby it was proved beyond all doubt that she had an *imp*, spirit, or familiar in the shape of a little child, which is thus related by Governor Winthrop: "In the prison, in the clear day light, there was seen in her arms, she sitting on the floor, and her cloths up, etc., a little child, which ran from her into another room, and the officer following it, it was vanished. The little child was seen in two other places to which she had relation; and one maid that saw it, fell sick upon it, and was cured by the said Margaret, who used means to be employed to that end."²

The devil's *imp*, or spirit, appeared in many different forms, among which the most popular were those of dogs, cats, fowls, hares, rats, toads, boys, men and women. The belief was that

once a day the *imp* came to suck, and the purpose of watching the accused was to discover the *imp* or spirit. In order that the *imp* might have an easy means of access, a hole was made in the door of the room where the witch was confined.

The other evidence of witchcraft against Margaret Jones was that she had a malignant touch, which caused many persons when stroked or touched by her, either in affliction or displeasure, to be taken with deafness, vomiting, or other violent pains or sickness; that she practised physick, and although her medicines were harmless in their nature, yet "they had extraordinary violent effects"; she told people who would not use her physick that they would never be healed, and their diseases and hurts continued beyond the apprehension of all physicians and surgeons; "some things which she foretold came to pass accordingly; other things she could tell of (as secret speeches, etc.) which she had no ordinary means to come to the knowledge of." The jury found her guilty, and Governor Winthrop vouches for the fact that "the same day and hour she was executed there was a great tempest at Connecticut which blew down many trees, etc."³

The Rev. William Hubbard, writing about 1680, remarks in connection with this execution of Margaret Jones in a chapter entitled "Memorable Accidents in New England from the year 1646 to 1651," as follows (page 530):

"Soon after she was executed, a ship riding over against Charlestown, of three hundred tons, having in her hold an hundred and twenty tons of ballast, and eighty horses aboard her for the Barbadoes, was on the sudden observed to roll, as if she would have turned over. The husband of that witch, lately executed, had

¹ Savage's Winthrop, II, 374.

² Savage's Winthrop, II, 397.

³ Savage's Winthrop, II, 397, 398.

desired passage in that ship to Barbadoes, which not obtaining, that accident was observed to follow. Notice being given of this to the magistrates then sitting in Court at Boston, a warrant was sent to apprehend him, and as the officer was passing therewith over the ferry, one asked if he could not tame the vessel, seeing he could sometimes tame men; he answered, I have that here which, it may be, will tame her and make her quiet, shewing his warrant, and at the same instant the ship began to stop her motion and swim upright, which had continued rolling after a strange manner about twelve hours, and after Jones was in prison she never moved in that kind any more."

The trials of Mrs. Ann Hibbins in 1655 and 1656 are chiefly distinguished by reason of the social position, education and intelligence of the accused, and because the magistrates refused to accept the jury's verdict of guilty and the case was decided by the General Court. Mrs. Hibbins was the widow of William Hibbins, a prominent Boston merchant, and a sister of Richard Bellingham, who was governor in 1641 and deputy governor at the time of her trial. Her husband had been the Colony's agent in England, and was one of the governor's assistants from 1643 to the time of his death in 1654. Her mind seems to have been deranged by the loss of wealth, and she became turbulent and was cast out of the church. Her person was searched for witch-marks, and her boxes and chests searched for puppets, images, etc. She made many enemies, but many persons thought her unjustly condemned. In the language of Governor Hutchinson, who wrote of her case in 1765: "It fared with her as it did with Joan of Arc in France—some counted

her a saint and some a witch, and some observed marks of Providence set upon those who were very forward to condemn her."¹

The details of these trials are very meagre. Governor Winthrop was dead, and the two great writers upon this theme, Increase and Cotton Mather, had not appeared upon the scene. On May 14, 1656, Mrs. Hibbins was called and appeared at the bar of the General Court; the indictment was read, and she answered not guilty, and was willing to be tried by God and the General Court. The evidence against her was read, the witnesses being present at the time but not testifying in person, and she then replied, and her answers were considered by the court. It was determined, the whole court being met together, that she was guilty of witchcraft, "according to the bill of indictment found against her by the jury of life and death. The governor in open court pronounced sentence accordingly, declaring she was to go from the bar to the place from whence she came, and from thence to the place of execution, and there to hang till she was dead."²

In 1656, Goodwife Walford was accused of witchcraft by Susannah Trimmis, and was tried before the Court of Assistants at Portsmouth. Mrs. Trimmis testified that she met Goodwife Walford in the woods on Sunday night who requested the loan of a pound of cotton, which she refused. They separated and Mrs. Trimmis stated that she was "struck as with a clap of fire on the back," and that the accused vanished toward the water side "in the shape of a cat." Mr. Trimmis and several others testified that Mrs. Trimmis was ill and nervous for some time after this encounter; but none of them equalled the cat story. The accused was not represented by counsel, and

¹ Hutchinson's Hist. Mass., I, 173 (ed. 1796); Hubbard's Hist. New England, 574.

² Mass. Records, IV, pt. 1, 269.

was denied the right of cross-examination. She was found guilty but was not executed.¹

The trial of Goody Glover in November, 1688, is remarkable for the experiments which the poor demented woman was made to perform in court. Some small images or puppets, made of rags and stuffed with goat's hair, were found in her house and produced at the trial. The charge against her was that of bewitching the children of John Goodwin. She confessed that she tormented the children by wetting her finger and stroking the images. Under the judges' orders she performed this experiment twice in court, and each time one of the children present fell into fits in the presence of the jury. She confessed further that she had a prince, with whom she had communion, and at night she was heard expostulating with a devil for deserting her. She was accordingly hung as a witch.²

Rhode Island enjoys the distinction of entire freedom from the witchcraft delusion, and no prosecutions ever occurred upon that charge. Her historian attributes this to the fact that Rhode Island "had suffered too much from the superstition and the priestcraft of the Puritans, readily to adopt their delusions, and there was no State clergy to stimulate the whims of their parishioners."³

In 1692 occurred the most memorable epidemic of witchcraft ever witnessed in America, and Salem was a hot-bed of witches. There was great popular excitement, and the jails in Essex, Middlesex and Suffolk counties were full of persons accused of that crime awaiting trial. Sir William Phips had

been appointed the first governor of the Province under the Charter of William and Mary of 1691. He was a firm believer in witches, and one of his first official acts was to commission a special Court of Oyer and Terminer for the purpose of trying witches in these three counties. This court consisted of seven judges, William Stoughton, chief justice, and the following associate judges: Nathaniel Saltonstall, afterwards succeeded by Jonathan Curwin; John Richards, Bartholomew Gedney, Wait Winthrop, Samuel Sewall, and Peter Sargent. These judges sat as a full bench and decided all questions of law upon the spot during the trials. No appeal was allowed. The commission was dated June 2, 1692, and the same day the court convened at Salem and commenced the trial of witches. The court sat five days, namely June 2, June 28, August 3, September 9 and September 17, 1692, and twenty persons were tried by jury, found guilty, sentenced and executed. Nineteen were hung, and one old man, Giles Corey, was pressed to death for standing mute.

Bridget Bishop, alias Oliver, was the first person tried at Salem for witchcraft. She had been charged with witchcraft twenty years before, but her accuser confessed on his death bed that the charge was false. She was of a fractious temper and much disliked in the neighborhood. The afflicted persons and the "confessors" testified that they had seen the prisoner's spectre, and an excrescence was found upon her body, which was believed to be an imp's tent. The jury considered this sufficient evidence of witchcraft, and returned a verdict of guilty; the judges sentenced her to suffer death,

¹ Adams's Portsmouth, 38-40 (1833);

Barstow's Hist. N. H. 63-66 (1845).

² Cotton Mather's "Memorable Providences" (1689);

"Witchcraft in Boston," by Wm. F. Poole, in Memorial History of Boston, II, 142, 143.

³ Arnold's R. I., 325.

and on June 10, 1692, she was hung by the high sheriff of Essex county.¹

At her trial as well as at the later trials at Salem, all the rules of evidence, justice and constitutional rights, as now recognized, were repeatedly violated. Any person who would say anything *against* the accused was brought into court and allowed the utmost freedom in giving his testimony. The right of cross-examination was denied the prisoner, and not one of those tried seems to have been represented by counsel. Self-confessed witches were required to tell what they knew of the accused, and the bewitched persons were permitted to state that their afflictions were caused by the prisoner. In one case (Wardwell's) a wife was allowed to testify against her husband. The jury searched the person of the supposed witch for witch-marks; the judges brow-beat the witnesses and the jury; and the populace overawed the judges and the juries, and cried aloud for blood.

The admission of "spectral" evidence against the accused was perhaps the worst feature of these trials—bad as they were in other respects. This occasioned a great dispute, and was considered a matter of such importance that Governor Phips and his Council requested the opinion of several of the principal ministers upon this question of evidence, among other matters arising out of the Salem trials. On June 15, 1692, the ministers returned a formal written reply, in which they condemned the use of spectral evidence, and stated that to justify a conviction of witchcraft the evidence "ought certainly to be more considerable than barely the accused person's being represented by a spectre unto the afflicted; inasmuch as it

is an undoubted and a notorious thing that a demon may, by God's permission, appear, even to ill purposes, in the shape of an innocent, yea, and a virtuous man."²

In Rebecca Nurse's case the first jury brought in a verdict of not guilty, which so enraged the accusers and the populace that the judges felt obliged to refuse to accept the verdict, and the same jury was sent out again, after being lectured by the chief justice, who also stated that the jury must have overlooked an important piece of evidence, to wit, the prisoner's surprised exclamation when a fellow-prisoner testified against her. She was allowed to state that she was surprised, and that she was so deaf that she could not hear what the foreman of the jury said. The jury then returned a verdict of guilty, and Rebecca Nurse was hung. Though the judges then had the power to accept a verdict of not guilty, the power was very seldom exercised.³

Giles Corey for standing mute was ordered by the court to be pressed to death, and the order was executed on September 19, 1692. The superstition and credulity of the times are shown by the following entry in Judge Sewall's Journal under date of September 20, 1692: "Now I hear from Salem that about eighteen years ago he (Corey) was suspected to have stamped and pressed a man to death, but was cleared. It was not remembered till Anne Putnam was told of it by said Corey's spectre, the Sabbath day night before the execution." The villain of the seventeenth century has become the hero-martyr of the nineteenth, and has been immortalized by the poet Longfellow in his tragedy entitled "Giles Corey of the Salem Farms."

¹ 2 Hutchinson, 49;
Barry's Hist. Mass. (3d ed.), 37.

² 2 Hutchinson (3d ed.), 49-51.

³ Upham's Lectures, 81;
2 Hutchinson (2d ed.), 52;
Washburn's Jud. Hist. 144.

The devil figured as a very conspicuous character in these proceedings. The allegations in the indictment against Mary Osgood, for instance, were "that Mary Osgood, about eleven years ago, in the town of Andover, wickedly, maliciously and feloniously a covenant with the Devil did make, and signed the Devil's Book and took the Devil to be her God, and consented to serve and worship him, and was baptized by the Devil and renounced her former Christian baptism, and promised to be the Devil's, both soul and body forever, and to serve him; by which diabolical covenant by her made with the Devil, she is become a detestable witch, against the peace, etc."¹

Mary Osgood was the wife of Captain Osgood of Andover, was a highly respectable woman, and much esteemed by her neighbors. The above indictment was based upon an alleged confession taken before John Hawthorne and other justices on September 8, 1692, in which Mrs. Osgood was reported as saying, "that about 11 years ago, when she was in a melancholy state and condition, she used to walk abroad in her orchard; and upon a certain time, she saw the appearance of a cat, at the end of the house, which yet she thought was a real cat. However, at that time, it diverted her from paying to God, and instead thereof she prayed to the devil; who, as a black man, came to her and presented her a book, upon which she laid her finger and that left a red spot: And that upon her signing, the devil told her he was her God, and that she should serve and worship him, and, she believes, she consented to it. She says further, that about two years ago, she was carried through the air, in company with deacon Frye's wife, Ebenezer Baker's wife, and Goody Tyler,

to live mile pond, where she was baptized by the devil, who dipped her face in the water and made her renounce her former baptism, and told her she must be his, soul and body, forever, and she must serve him, which she promised to do. She says, the renouncing her first baptism was after her dipping, and that she was transported back again through the air, in company with the forenamed persons, in the same manner as she went, and believes they were carried upon a pole."²

Anthony Checkley acted as attorney-general at some of the Salem trials, his commission having been issued by Governor Phips on July 7, 1692. He was a merchant and military man, and had no special education or training for the bar.

This special court adjourned from September 17, 1692, to the first Tuesday of November, and was dissolved in the meantime. The Charter of 1691 conferred upon the legislature the power of establishing courts. As this special court was not established by the General Court, but merely by the governor, it is generally regarded as having acted without authority of law.³ The objection may be technically correct; but it should be noticed that the legislature was in session from June 8, to July 2, 1692, and that no statute was enacted or even proposed to stop the course of the trials at Salem. On the contrary, the old colonial law which made witchcraft a capital offense was revived.⁴

It is consoling to professional pride to know that none of the judges who sat at the Salem trials for witchcraft had been educated as lawyers. Chief Justice Stoughton and Judge Sewall were educated for the ministry; Judges Winthrop and Godney were physicians, and

¹ Washburn, 142.

² 2 Hutchinson (2d ed.), 31.

³ Washburn, 141.

⁴ Hutchinson (2d ed.), 11, 52.

the other judges were merchants or military men. Judge Saltonstall seems to have been the only one on the bench who was not carried away by the popular delusion and clamor. He left the bench early in the trials, probably because he disapproved of the proceedings. In 1697, Judge Sewall made a public confession in church of his errors and sins in connection

with these witchcraft trials, and prayed forgiveness. The details of this confession are fully set forth in his journal under date of January 15, 1696-7.¹ Stoughton, however, remained a firm believer in witchcraft until his death, and seems never to have regretted the part he took in the Salem trials.

CHAPTER II.

In striking contrast with the present separation of the powers of government into three departments—executive, legislative and judicial—was the early union of these powers. Powers now recognized as clearly judicial in their nature and pertaining exclusively to the courts were generally exercised by the legislature, and in some classes of cases the legislature retained this jurisdiction well into the nineteenth century.

The Massachusetts Charter of 1691 was the first important step in the direction of separating these departments.

Until 1707, the powers of the General Court of Massachusetts to try and sentence offenders for past offences, seems to have been exercised without objection from the English government, and was generally considered to be regular and proper in the Colony and Province under the charters of 1629 and 1691. Acting upon this view, the General Court, in 1706, tried Samuel Vetch, John Borland, Roger Lawson, William Rouse, John Phillips and

Ebenezer Coffin for trading with the French and Indians at Nova Scotia; found them all guilty of the charge, which was prosecuted by the governor's son, Paul Dudley, acting as queen's attorney, and imposed sentences of fine and imprisonment. These sentences were, however, declared to be invalid by the Queen and her Privy Council at a meeting held on September 24, 1707, for the reason that the General Court had no power to try criminals, as that power resided in the courts of law, where the proceedings could be carried on by the ordinary rules and known methods of justice. The fines were accordingly remitted, and the parties ordered to stand a new trial at law, if prosecuted within a year.²

In 1678 the Rhode Island Assembly refused to take jurisdiction of the civil case of Sandford v. Forster, which had been twice tried by the General Court of Trials, composed of the governor and assistants, and disclaimed the power to review the judgments of that court, except in cases of criminal nature, or of mullet or fines. In 1680, however, the Assembly reasserted the right to review by appeal the judgments of the

¹ Washburn, 146, 260.

² 2 Hutchinson (2d ed.), 156-158.

General Court of Trials, and continued to exercise this power for many years.¹

While judicial powers were exercised by the legislature, prior notice to the party bound by the judgment was not considered essential, though he was sometimes given time to move in arrest of judgment. An instance of this method of procedure is shown in the case of Mr. Williams of Pascutaqu. In 1645 the General Court of Massachusetts hearing that Mr. Williams had in his possession a negro slave who had been fraudulently brought from Guinea by Captain Smyth, ordered him to surrender the slave in order that the General Court might cause him to be returned to his home. The judgment then continued: "And if you have anything to allege why you should not return him to be disposed of by the Court, it will be expected you should forthwith make it appear either by yourself or your agent."²

In judicial proceedings the defendant has always been entitled to due notice and an opportunity to present his defence. Under our existing Constitution, these are essential to due process of law, and without them the judgment is not binding upon the defendant.³ In 1641 the Massachusetts Body of Liberties by Article 21 required the first summons to be served on the defendant not less than six days "before the court." A little later, a notice of five days was sufficient.⁴

Even a rebel cannot be denied a hearing.⁵

On the other hand, in legislative proceedings, notice to parties and opportunity to object to a proposed law have never been essential to the

validity of the statute. When the legislature has the power to grant divorces, for instance, prior notice to the litigee is not necessary.⁶ The divorce then partakes more of the nature of a statute than of a judgment or decree. This difference is fundamental in our form of government.

In many Colonies it was common practice for the legislature to grant divorces, and until recently this power was generally conceded to reside in that department of government.

**Section 13.
Legislative
Divorces.**

"When this country was settled, the power to grant a divorce from the bonds of matrimony was exercised by the Parliament of England. The ecclesiastical courts of that country were limited to the granting of divorces from bed and board. Naturally, the legislative assemblies of the colonies followed the example of Parliament and treated the subject as one within their province. And until a recent period legislative divorces have been granted, with few exceptions, in all the States."⁷

In Connecticut, the legislature at first granted divorces itself, and afterwards conferred the power on the Superior Court to grant divorces upon certain specified grounds, among which were adultery and desertion, and continued to grant divorces itself upon other grounds, not specified. In 1795, Judge Swift stated: "Frequent applications are made to the legislature for such purpose, and it seems to have been adopted as a general rule that in all cases of intolerable cruelty, and inveterate hatred, and

¹ Arnold's Hist. Rhode Island, I, 448, 456, 460 (3d ed.).

² Belknap's Hist. N. H., I, 75 (ed. 1784).

³ Pennoyer v. Neff, 95 U. S. 714;

Elliot v. McCormick, 144 Mass. 10.

⁴ Hubbard, 159.

⁵ McVeigh v. United States, 11 Wall. 259.

⁶ Maynard v. Hill, 125 U. S. 190;

Cronise v. Cronise, 54 Pa. St. 255.

⁷ Per Field, J., for the Court in

Maynard v. Hill, 125 U. S. 190, 206;

Bishop, Mar. & Divorce, section 664;

Cronise v. Cronise, 54 Pa. St. 255, 261;

Stowe v. Pease, 8 Conn. 541;

Cram v. Meginnis, 1 G. & J. (Md.), 463, 474.

such gross misbehavior and wickedness as defeat the design of marriage, and presumptive proof of a criminal connection with another person, where the positive proof required by law cannot be had, divorces may be granted."¹ Even under the Constitution of 1818, the legislature had the power of granting divorces.²

In Massachusetts, jurisdiction in divorce was early conferred upon the Court of Assistants, with a right of appeal to the General Court.³

On December 3, 1639, the Court of Assistants or Quarter Court held at Boston, at which nine members were present, decreed a divorce to the wife of James Luxford, for the reason that he had two wives living, and his last marriage was declared null and void. He was also fined one hundred pounds, put in the stocks and banished, and all his property given to his second wife and her children.⁴

On March 5, 1644, the Court of Assistants "ordered that John Richardson should be sequestered from Elizabeth Fryar, to whom he was married ye 12th of the 8th Mo., and neither to meddle with her person nor estate till things be cleared by advice from England."

On November 13, 1644, the General Court on additional testimony, "do declare the last marriage to be void, which was Elizabeth Fryar."⁵

The case of Jane Halsall vs. George Halsall is striking and peculiar, in that the General Court in 1659, three years after the wife had been granted a divorce by the Court of Assistants on the petition of the husband that his wife "may be returned to him," ordered, after hearing both parties, "that the judgment of the

said Court of Assistants in reference thereto be void, and that the said George Halsall shall have and enjoy the said Joan Halsall, his wife, again."⁶

The Governor and Council were given jurisdiction to grant divorces by the province statute of 1692-93, c. 25, sec. 4. Their proceedings were judicial in nature and were decided by a majority vote of those present, even if the governor voted with the minority.⁷ The Governor and Council continued to exercise this power of granting divorces down to the period of the Revolution. After the departure of the royal governor and lieutenant-governor, and when there was no court in the State empowered to grant divorces, the legislature at the March session of 1780, chapter 7, granted a divorce.

In 1792, a divorce having been granted by a resolve of the legislature, Governor Hancock disapproved the resolve on the express ground that it was beyond the constitutional power of the legislature; that since the Constitution of 1780 and the statute of 1785, chapter 69, this power vested exclusively in the Supreme Judicial Court.⁸ The legislature, however, continued at long intervals to pass similar resolves relating to marriage and divorce, and the courts have held them unconstitutional.⁹

Under the Massachusetts Charter of 1691, the Governor and Council were authorized to prove wills and grant administration, and exercised these powers for many years. The Governor and Council also appointed judges of probate in the several counties, with a right

Section 14. Probate Jurisdiction.

¹ Swift's System, I, 198.

² Stowe v. Pease, 8 Conn. 341.

³ Whitmore's Colonial Laws of Mass., 101 note.

⁴ Whitmore's Colonial Laws, 100 note.

⁵ Whitmore's Colonial Laws, 99, 100 (1890).

⁶ General Court Records, II, 86.

⁷ Whitmore's Colonial Laws, 100, 101 note.

⁸ Sparhawk v. Sparhawk, 116 Mass. 315, 317.

⁹ Peters v. Peters, 8 Cushing, 529, 541.

¹⁰ Shannon v. Shannon, 2 Gray, 285, 288, per Metcalf, J.

¹¹ White v. White, 105 Mass. 325.

¹² Sparhawk v. Sparhawk, 116 Mass. 315.

of appeal to the Governor and Council, who were the supreme court of probate until after the Revolution. These probate judges were, therefore, merely surrogates of the Governor and Council, and exercised only a delegated and limited authority.¹ Although a provincial act was passed, establishing courts of probate, it was negated by the king. The proceedings in the probate courts were very loose and informal. As late as 1760, they had no seal, and kept no records, and had no rules of court.²

The Constitution of Massachusetts of 1780 continued the power of the Governor and Council for a short time, by providing in chapter 3, article 5, that "all appeals from the judges of probate shall be heard and determined by the Governor and Council, until the legislature shall by law make other provision." The statute of 1783, c. 46, enacted March 12 1784, established the County Courts of Probate, and constituted the Supreme Judicial Court the Supreme Court of Probate, and abolished the probate jurisdiction of the Governor and Council.³ This jurisdiction has remained in the Supreme Judicial Court to the present time.⁴

In *Wales v. Willard*, 2 Mass., 120, Chief Justice Parsons, in delivering the opinion of the court, says on page 124: "The County Courts of Probate were never established by any statute until the act of March 12, 1784. Before the Revolution, the judges of probate were considered as surrogates of the Governor and Council, who derived from the royal charter the authority to prove wills and to grant administrations. A provincial act was passed for erecting Courts of Probate in the several coun-

ties, but it was negated by the king. A number of other acts were afterwards passed, which recognize the power of the Courts of Probate, and regulate appeals from them to the Governor and Council, which were approved. By the Constitution, among other laws, the acts regulating and defining the proceedings of the Courts of Probate were confirmed, and the appeal given to our Governor and Council, until the legislature should otherwise provide. By the statute of March 12, 1784, Probate Courts were established, with the powers and jurisdiction given by the laws of the Commonwealth. The appellate jurisdiction is vested in the Supreme Judicial Court: to which is also given original jurisdiction in all cases in which the judge of probate is interested."

In 1670 the General Court of Massachusetts authorized the sale of lands of a deceased debtor for payment of his debts: a law which Hubbard thought to be "very necessary . . . where men often die seized of much land, and little other estates."⁵

In many classes of cases where the Colonial legislatures preferred not to rehear cases themselves, they granted new trials in actions which had been previously determined by the ordinary courts. This practice was subversive of the independence of the judiciary and finally led to controversy between the two departments. New Hampshire was the scene of a thirty years' war upon this point, which ended in favor of the judicial department. The war began about 1791 when the General Court ordered a new trial in the case of *Gilman v. McClurey*. The Superior

**Section 15.
New Trials
Granted
by the
Legislature.**

¹ *Wales v. Willard*, 2 Mass. 120, 124, per Parsons, C. J.; *Peters v. Peters*, 8 Cush. 529, 540-542, per Shaw, C. J.; *White's Probate Courts*, 17-21.

² Washburn, *Jud. Hist. Mass.*, 187.

³ *Wales v. Willard*, 2 Mass. 120, 124.

⁴ *Peters v. Peters*, 8 Cush. 529, 541, 542.

⁵ *Public Statutes*, c. 156, sec. 5;

Sparhawk v. Sparhawk, 116 Mass. 315, 318.

⁶ Hubbard's *New England*, 592.

Court accepted the gage of battle, declared the statute unconstitutional, and refused to allow a new trial. The legislature renewed the fight at least twice within the following six years, and granted new trials in the cases of *Chickering v. Clark* and *Batterfield v. Morgan*. Again the Court declined to obey the statute. Still dissatisfied, the legislature ordered new trials in *Jenness v. Seavey* and in *Merrill v. Sherburne*, which the court refused. The case last cited contains a full and able discussion of the question by Judge Woodbury, in which it was clearly demonstrated that the power of granting new trials resided in the courts and not in the legislature.¹

In Connecticut the exercise of this power of granting new trials, gave rise to the decision of an important question of law by the Supreme Court of the United States in 1798. *Caldier v. Bull*, 3 Dallas, 386, involved the constitutional validity of a statute or resolution of the General Court of Connecticut, setting aside a decree of a private court and granting a new hearing before the same court. The State courts held this statute to be valid, and granted a new hearing, which resulted in a decision for the other party. The defeated party then carried the case to the United States Supreme Court, claiming that the State law was an *ex post facto* law, in violation of the Federal Constitution. The Supreme Court, however, held that this provision applied only to criminal matters, and therefore affirmed the judgment of the State court. Judge Paterson in the course of a learned opinion says: "It appears that the legislature, or general court of Connecticut, originally possessed and exercised all legislative, executive and judicial authority. They

acted in a double capacity, as a house of legislation with undefined authority, and also as a court of judicature in certain exigencies."² At this time, Connecticut had no Constitution except the Charter of 1662, which had been ratified by the legislature, but had not been voted upon by the people at large.

In 1813, the legislature of Massachusetts, after the plaintiff's right of action had become barred under the general statute of limitations relating to executors and administrators, passed a resolve authorizing the plaintiff to sue the defendant within one year after its passage, and expressly providing that "the operation of the several statutes of limitation of this Commonwealth, so far as they may come within the provision of this resolve, i.e., and they hereby are, suspended, and the same shall not operate as a bar to the several actions, suits, and claims above mentioned." The plaintiff commenced his action within the year. The Supreme Judicial Court held, in an able opinion by Mr. Justice Jackson, that the resolve was unconstitutional, for the reason that the legislature had not the power to suspend the operation of a general law in favor of an individual; that the right of action was therefore barred, and the plaintiff could not recover.³

In *Denny v. Mattoon*, 2 Allen, 361, it was decided that the Statute of 1860, chapter 78, which purported to confirm proceedings had before a certain judge of insolvency, after such proceedings had been adjudged invalid by the Supreme Judicial Court, was unconstitutional. Chief Justice Bigelow, in delivering the unanimous opinion of the court, remarked upon this subject (pages 378, 379):

"The wise and salutary provision in our

¹ *Merrill v. Sherburne*, 1 N. H. 199 (1819).

² *Caldier v. Bull*, 3 Dall., 386, 393.

³ *Holden v. James*, 11 Mass. 396.

See also, *Denny v. Mattoon*, 2 Allen (Mass.) 361; *Waters v. Stickney*, 12 Allen (Mass.), 1, 6, 7.

Constitution, by which its framers sought to declare the distribution of the different powers of the government and to keep them separate and distinct, is not a mere abstract truth. It is capable of a practical application, by which each department may be made to operate within its own appropriate sphere, so as to accomplish the great end of securing a government of laws and not of men. Although it may be difficult, if not impossible, to lay down any general rule which may serve to determine, in all cases, whether the limits of constitutional restraint are overstepped by the exercise by one branch of the government of powers exclusively delegated to another, it certainly is practicable to apply to each case, as it arises, some test, by which to ascertain whether this fundamental principle is violated. If, for example, the practical operation of a statute is to determine adversary suits pending between party and party, by substituting in the place of the well settled rules of law the arbitrary will of the legislature, and thereby controlling the action of the tribunal before which the suits are pending, none can doubt that it would be an unauthorized act of legislation, because it directly infringes on the peculiar and appropriate functions of the judiciary. It is the exclusive province of courts of justice to apply established principles to cases within their jurisdiction, and to enforce their decisions by rendering judgments and executing them by suitable process. The legislature have no power to interfere with this jurisdiction in such manner as to change the decision of cases pending before courts, or to inquire or set aside their judgments, or take cases out of the settled course of judicial proceeding. It is on this principle that it has been held that the legislature have no power

to grant a new trial or direct a rehearing of a cause which has been once judicially settled. The right to a review, or to try anew facts which have been determined by a verdict or decree, depends on fixed and well settled principles, which it is the duty of the court to apply in the exercise of a sound judgment and discretion. These cannot be regulated or governed by legislative action. *Taylor v. Place*, 4 R. L. 324, 337. *Lewis v. Webb*, 3 Maine, 326. *De Chastellux v. Fairchild*, 15 Penn. State R., 18. *A fortiori*, an act of the legislature cannot set aside or annul final judgments or decrees. "This is the highest exercise of judicial authority. Lord Coke calls judgment and execution the 'Fruit of the law'. To vest in the legislature the power to take them away, or to impair their effect on the rights of parties would be to deprive the judiciary of its most essential prerogative. It could then no longer adjudge and determine the rights of litigants. The will of the legislature would be substituted in the place of fixed rules and established principles, by which alone judicial tribunals can be governed."

In Rhode Island until the adoption of the Constitution of 1843, the General Assembly not only had the power to grant new trials, but repeatedly exercised that power in all classes of cases, legal and equitable, after the time had elapsed within which the courts could grant new trials. As late as 1834 the legislature exercised this power; but the Supreme Court held it to be unconstitutional, as an exercise of judicial power, prohibited to the assembly by the Constitution of 1843.¹

In 1825 the Supreme Court of Maine decided that it was beyond the constitutional power of the legislature of that State to pass an act or

¹ *Taylor v. Place*, 4 R. L. 324 (1856). This case contains a learned discussion by Chief Justice Ames, who was also the official reporter at that time.

resolve granting a new trial or an appeal in any case between private citizens.¹

Our early judicial history shows that very slight respect was paid to the freedom of contract or to the obligation of contracts. The

**Section 16.
Fixing Prices
of Labor
and
Commodities.**

doctrine that an unconscionable bargain was invalid, was freely enforced by the courts, as well as by the legislature. Any charge that savored of extortion was not only unenforceable at law, but was punishable as a criminal offence. At the very first sitting of the Court of Assistants, which occurred at Charlestown, on August 23, 1630, it was ordered "that carpenters, joiners, bricklayers, sawyers, and thatchers take no more than two shillings a day, under pain of ten shillings to giver and taker."² This policy of regulating prices by law continued for many years in the Colonies with only a few interruptions for short intervals. The power of regulation was for some time lodged in the freemen of the towns, and when the towns differed upon rates, the county court promulgated uniform rates.³

In 1633 workmen were so scarce that wages had again become excessive, and laborers were able to earn enough in four days to support them a week. A carpenter received three shillings a day, and a laborer two shillings and six pence. According to Governor Winthrop this caused many evils to spring up, among which were idleness and the drinking of strong waters, and the use of tobacco. The sellers of food and other commodities also advanced prices, sometimes to double the cost in England. Corn cost six shillings a bushel; a cow twenty pounds to twenty-six pounds; a mare thirty-five pounds; a ewe goat three or four pounds.

These high wages and prices became a matter of general complaint, and accordingly the Court of Assistants of Massachusetts Bay in 1633 passed an order that for the future carpenters, masons, etc., should charge not more than two shillings a day; that laborers should not charge more than eighteen pence per day; and that no commodity should be sold for upward of four pence in the shilling more than it cost for ready money in England, excepting only oil, wines, liquors and cheese, on account of the hazard in bringing over the ocean.⁴

In 1639, Captain Robert Keayne, who kept a shop in Boston, was complained of for oppression in the sale of foreign commodities, his prices being notoriously higher than those of other shop keepers. Although there was no statute in force at that time regulating the price of such commodities, Captain Keayne was "convicted" before the General Court, was duly tried and convicted and sentenced to pay a fine. The deputies wished to impose a fine of two hundred pounds, "for the cry of the country was so great against oppression, and some of the elders and magistrates had declared such detestation of the corrupt practice of this man"; but the magistrates agreed to only one hundred pounds; and the matter was finally compromised between the two branches by a fine of one hundred pounds, and by referring the question to the next General Court, which remitted 120 pounds of the fine.⁵

In 1640, there being a scarcity of money, and prices of cattle and commodities having fallen greatly within a few years, the General Court of Massachusetts passed the following order: "That upon every execution of debts past, the officer shall take land, houses, corn,

¹ *Lewis v. Webb*, 3 Greenleaf, 326.
² *Savage's Winthrop*, I, 36.
Hubbard, 148.

³ *Savage's Winthrop*, I, 36.

⁴ *Savage's Winthrop*, I, 138, 139.

⁵ *Savage's Winthrop*, I, 377-392.

cattle, fish, or other commodities, and deliver the same, in full satisfaction to the creditor, at such prices as the same shall be valued at by three understanding and indifferent men, to be chosen the one by the creditor and another by the debtor, and the third by the marshal. And the creditor is at liberty to take his choice of what goods he will, and if he hath not sufficient goods to discharge it, then he is to take his house, or land, as aforesaid."¹ Under our present National Constitution, a State statute of this nature is unconstitutional, as impairing the obligation of contracts.²

The weight and price of bread were also regulated by law, and bakers fined for infractions thereof. At a Quarter Court of the Massachusetts Court of Assistants held at Boston on December 7, 1611, Thomas Hawkins was fined five shillings for making light weight bread; or, as it was expressed in the sentence, "for making bread to light."³ It would not, however, be safe to infer that Hawkins's bread was used for illuminating purposes.

The intent and purpose of these regulations were to keep wages below the level of the rate of free contract. The power was exerted by and in the interest of the employing class, which then controlled the courts and the legislature. The abundance of cheap land in New England, however, prevented these laws from accomplishing their purpose.⁴ At that time the wage earners were in favor of the freedom of contract, and the employers were opposed to it. The demand for labor exceeded the supply of labor, and if the machinery of the law had not been used against the laborers, they could have ob-

tained higher wages. The doctrine of *laissez faire* then operated in favor of the workmen and against the employer.

The policy of State regulation continued throughout the seventeenth century and a part of the eighteenth century; but was generally abandoned during the latter part of the eighteenth century. During the life of the present generation this policy has been revived in some respects. Maximum charges for railroad transportation and for storage of grain in elevators, and for gas and electric light have been established by law and enforced by courts and commissions.⁵

The wage earners, although they have not yet succeeded in obtaining much legislation in favor of a fair minimum wage, have discussed the question in public to such an extent as to attract attention and compel consideration.

The positions and arguments of the two parties have become precisely reversed in the course of two hundred years. In the seventeenth century the employers favored State regulation of wages and argued that it was necessary in order to prevent extortionate wages, while the workmen favored non-interference by the State, and contended for freedom of contract. Then, there was a scarcity of labor in New England, while now, owing chiefly to labor saving machinery and immigration, there is a surplus of labor. Wages are low and employers are now opposed to State regulation of wages, while employees are in favor of it, as a means of securing higher wages.

The policy of fixing a maximum workday

Section 17.
Same
Subject
Continued.

¹ Mass. Records, I, 291, quoted in Savage's Winthrop, II, 8 note.

² *McCracken v. Hayward*, 2 Howard, 608; *Barnitz v. Beverly*, 163 U. S. 118.

³ Whitmore's Sketch Colonial Laws, Preface XXVIII.

⁴ Savage's Winthrop, II, 29.

⁵ *Munn v. Illinois*, 94 U. S. 113; *Chicago, etc., Ry. v. Minnesota*, 134 U. S. 418; Inter-State Commerce Act of 1887; Mass. St. 1885, c. 314, sec. 9.

has made considerable progress in legislation, and been generally enforced by the courts.¹

The power of the Colonial Courts to fix maximum wages was exercised without doubt or question of its validity, and was in pursuance of the English practice, which originated in 1350, shortly after the Great Plague. Fully one-third of the laboring population died during this plague of the black death, and wages rose to double or treble the rate that prevailed immediately before the plague. The landowners and other classes of employers who controlled Parliament, accordingly passed the Statute of Laborers, and gave the courts the power of fixing wages, with the intent of reducing wages below the contract rate. Various other statutes of like nature and purpose were enacted by Parliament from time to time, and the courts continued to possess this power for nearly five hundred years.²

This was the period of hand-labor, before the introduction of machinery upon a large scale. With the advent of the factory system and the employment of women and children to operate machinery, conditions rapidly changed, and the contract rate of wages fell below the legal rate. Parliament then repealed the Statute of Laborers, for the benefit of the employers and against the protests of the employees. In 1814, three hundred thousand workmen signed petitions and presented them to Parliament against the repeal of the Statute of Apprentices of Elizabeth,³ but Parliament disregarded the request and repealed the statute by the Act of 54 George III, c. 36.

In 1881, Parliament under the leadership of William E. Gladstone, revived the policy of legal rates, but reversed the intent and purpose

of the early statutes, by the passage of the Land Act for Ireland. This statute established a Land Court and Land Commission with power to fix maximum rents for agricultural holdings. Since then, under the operation of this law, rents in nearly all the agricultural holdings of Ireland have been reduced about twenty per cent. below the former contract rate. A report of a select committee of seventeen members appointed by the House of Commons to investigate the working of this Act in 1894, shows that the gross amount of rental dealt with from 1881 to March 31, 1894, was £6,140,602, and that this total had been reduced by £1,279,475, or 20.8 per cent. The same report dated August 20, 1894, also states that the total number of fair rents fixed by all methods from 1881 to March 31, 1894, was 294,654, divided as follows among the different methods:

Rents fixed by Land Commission Courts	157,158
" " County Courts	15,537
" " " landlord and tenant	121,902
" " " arbitration under Section 40	37
Total number of rents fixed	294,654
Cases struck out, withdrawn or dismissed	60,536
Total number of cases	354,890

After the Revolution the judges of the Superior Court were charged with the duty of computing the current prices of corn, beef, sheep's wool and sole leather upon an average throughout the State of Massachusetts, with a view to the payment of the promissory notes issued to the soldiers of the Continental Army for their pay. These notes were payable, "both principal and interest, in the then current money of the State, in a greater or less sum according as five bushels of corn, sixty-eight

**Section 18
Computing
Current Prices
and Value
of Bills of
Credit.**

¹ Mass. St. 1874, c. 281, enforced in *Commonwealth v. Hamilton Mfg. Co.*, 120 Mass. 383; Eight hour law of Utah, enforced in *Holden v. Hardy*, 169 U. S., 366.

² Rogers's "Six Centuries of Work and Wages."

³ Brentano's "Relation of Labor to Law," p. 71

pounds and four-sevenths parts of a pound of beef, ten pounds of sheep's wool and sixteen pounds of sole leather shall then cost more or less than one hundred and thirty pounds current money, at the current prices of said articles."

On January 25, 1781, the legislature of Massachusetts passed an act empowering the justices of the Supreme Judicial Court "or the major part of them" to determine the value of bills of credit emitted by the United States or by this State.

Contrary to the common law of England, parties in civil suits were allowed to testify in their own favor in some cases, but not in others.

Section 10. The epoch-making case of *Sherman v. Keayne*, which caused the separation of the two branches of the legislature, shows that very peculiar reasons were sometimes given for decisions upon this subject. Mrs. Sherman having lost her only sow, to which she was much attached, claimed to have discovered her upon the premises of Captain Keayne, who denied the plaintiff's ownership, but admitted that he had a stray sow, which he had had cried several times for a year, without claimants. The inferior court of Boston decided in favor of the defendant, and the jury awarded him three pounds as costs of court. Some time afterward the General Court, upon petition in Mr. Sherman's name, granted a rehearing of the case, which lasted nearly seven days. Neither party obtained the votes of a majority of both the magistrates and the deputies, and therefore no judgment was rendered. Two magistrates and fifteen deputies were in favor of the plaintiff and seven magistrates and

eight deputies were in favor of the defendant, while seven deputies refused to vote. The plaintiff's wife was allowed to testify as to the marks of her sow, but the defendant and his wife were denied the like right, for the reason, as Governor Winthrop expresses it, of "that rule in the law—he shall swear he hath not put his hands to his neighbor's goods."¹

At the trial the magistrates claimed the power to negative or veto the action of the deputies. The dispute upon this question continued for many years and finally culminated in 1644 in the separation of the two branches, each with a negative upon the acts of the other in legislative matters. In judicial matters, however, they continued to sit in joint convention and to act as one body. The result was, therefore, a partial victory for each side. The magistrates sustained their right of negative, and the deputies acquired a right of negative in legislation, while in judicial matters the right of negative was not sustained in favor of either party. As the deputies largely outnumbered the magistrates, the decision of judicial cases after this was within the power of the deputies.²

When and how the practice originated in New England allowing the plaintiff in an action on a book account to testify in his own favor, are shrouded in doubt and mystery. It was contrary to the common law of England to allow parties to testify in this manner, and the custom seems to have grown up in New England by the action of the courts and irrespective of statute. The Crown Charters prohibited the Colonies from enacting laws re-

Section 20.
Party as Wit-
ness.
Supplementary
Oaths of
Plaintiff.

¹ Savage's Winthrop, II, 85, 84, 85.

² Palfrey's New England, I, 617-622.

Whitmore's Colonial Laws, 134.

Hubbard's New England, 392, 393, 391.

pugnant to the laws of England, and it was a favorite resort of the Colonists, when they wished to evade this provision, to enforce a custom to do that which they wished to do, without passing a law upon the subject.¹ This view is also supported by the circumstance that as early as 1654, the Massachusetts court passed an order requiring the plaintiff to swear "to the truth of the whole book," and requiring shop books in order to be competent evidence to be kept in a certain prescribed form.² Judge Swift of Connecticut states that it is impossible to trace the origin of this custom, "but it is probably coeval with our government," and that in the year 1714 a statute was passed in Connecticut which recognized the custom as then established, and provided that "the jury shall well weigh and consider the credit of the parties."³

In 1806, Judge Parker referring to this subject said: "This mode of proof is peculiar to our country, and probably has been in practice from its first settlement. The jury are the proper and adequate judges of the weight of this, as of all other evidence laid before them."⁴ This rule of law prevails also in the State Courts of Maine, New Hampshire and other States, as well as in the Federal Courts.⁵

Section 21.
Touching the
Body of a
Murdered
Person.

Self-conviction by a person accused of crime was frequently enforced in the early courts of New England. Where a secret murder was discovered, the accused person was compelled to touch some part of the corpse, and if the blood came

fresh from the spot touched, he was surely guilty of the murder. God was supposed to have appointed this sign for the detection of the murderer, and the blood of the deceased was believed to be crying to Heaven for revenge. This practice was borrowed from England, and King James I. expended some of his learning upon the subject in his "Demonologie." This method of proof was employed with fatal result in 1646 in the town of Boston. An infant having been found dead, Mary Martin, who was then only twenty-two years of age, and who had been a very proper maiden of modest behavior, was accused of being the mother and having murdered her own child. Upon her trial, the jury caused her to touch the face of the infant: "whereupon the blood came fresh into it," as Governor Winthrop informs us, and she was found guilty and executed. She hung for some time in mid-air alive, and asked what they meant to do; until some one stepped up and turned the knot of the rope, which caused her death.⁶

The rule of evidence excluding hearsay was habitually disregarded in early judicial proceedings, both in civil and criminal matters. Thomas Wiltshire having performed work upon Captain Keayne's house and there being due him thirty-eight shillings on the job, agreed to accept payment in Spanish broadcloth. The captain probably thought that Spanish broadcloth was too good for the use of said Thomas, and therefore delivered to him an inferior quality, for which he charged seventeen shillings

Section 22
Hearsay
Testimony.

¹ Thus Governor Winthrop states that to enact that marriages shall not be solemnized by ministers is repugnant to the laws of England; "but to bring it to a custom by practice for the magistrates to perform it, is no law made repugnant, etc." *Savage's Winthrop*, I, 323.

² Washburn's *Jud. Hist. Mass.* 56.

³ Swift's *System*, II, 166.

⁴ *Cogswell v. Doffiver*, 2 Mass. 217, 220, 221.

⁵ *Hopper v. Taylor*, 39 Maine, 224;

Webster v. Clark, 39 N. H. 245;

White v. Ambler, 8 N. Y. 170;

Insurance Co. v. Weide, 9 Wall. 677;

Bates v. Preble, 151 U. S. 149.

⁶ *Savage's Winthrop*, II, 368-370.

per yard. Thomas Wiltshire became dissatisfied and sued the captain, and filed an affidavit containing the following beautiful illustration of hearsay: "The which cloth this deponent showed to Henry Shrimpton, and he said it was not worth above ten shillings per yard, for it was but cloth rash, and so said Goodman Read, and his wife showed a waistcoat of the same kind of cloth, which cost but nine shillings per yard, and in this deponent's judgment was better cloth; and this deponent showed the same cloth to Mr. Rock, and he said it was worth but ten shillings per yard, for it was but cloth rash, and this deponent showed it also to Mr. Stoddard, and he said likewise that it was cloth rash, and was not worth ten shillings per yard, and was dear enough at that price, or words to that effect."¹

Our present practice of taking an oath in court by holding up the right hand, originated in the earliest times of England. The

**Section 23.
Forms of
Oaths
and Writs.**

practice in New England was to swear by the Bible, and the first settlers were well aware of this, and adopted the other form, because they regarded swearing by the Bible as idolatrous.² This practice being contrary to the law of England, was not authorized by an express statute apparently, but was enforced by the courts as a custom of the country, which was their usual method of evading the provision of the Charter that no law should be made repugnant to the laws of England.³ Kissing the Bible or laying the hand upon it seems to have originated among the Jews; and it is somewhat strange that the New England settlers should have been the only English settlers in America to discard this old English custom. In most respects they attached more

importance to the Bible than the other Colonists.

For many years after the first settlement, writs and legal process were not framed in the King's name, and this was made a cause of complaint against the Colonists. Hutchinson gives the following as a form of writ in Massachusetts in 1650:

"To the Marshall or his Deputy.

"You are required to attach the goods or lands of William Stevens to the value of one hundred pounds, so as to bind the same to be responsible at the next court at Boston, 29th of the 5th month, to answer the complaint of Mr. James Attwood in an action of debt, to the value of fifty pounds, upon a bill of exchange, and so make a true return hereof under your hand. Dated 29th 2d mo, 1650, per curiam, Wm. Aspinwall."⁴

The practice of inserting the declaration in the writ seems to have originated in Connecticut at an early day, and when the defendant did not appear in court, after due service of process, he was defaulted, and judgment ordered against him. When the plaintiff wished to attach the defendant's property on mesne process, he was required to give a bond for prosecution, to indemnify the defendant if the action was not sustained. The case of *Claster v. Measure* brought in 1670, illustrates the form of the writ and the bond:

"To the Marshall or either of the Constables of Lime. These are in his Majesties Name, to Will and Require you to Attach the estate of William Measure of Lime to the value of ten pounds and for want of Estate his person with sufficient Surety or Sureties for his appearance at the Court to be holden at Hartford on the 13th day of the month next ensuing, to answer

¹ *Savage's Winthrop*, II, 85, 86.

² *Hutchinson* (3d ed.), 454.

³ *Ante*, Section 30.

⁴ *Hutchinson*, I, 432.

John Chester of Weathersfield in an Action of Debt, with Damages, to the value of seven pounds, and six shillings, and what Estate you Attach, or Security you receive, you are to secure it in your hands, that it may be responsible to Answer the aforesaid Action, and the Judgment of the Court therein: the Plaintiff having given sufficient caution to prosecute his Action to effect, and answer all Damages in case he make not his plea good: You are also to make return of the serving hereof to the said Court, or to the Clerk before the Court.

Hereof fail not:

"Dated in Hartford the 22nd day of September, 1670.

"Acknowledged before me,

"John Allyn, Sectt.

"Wee Richard Lord and Jonathan Gilbert acknowledge ourselves Bound to the Publick Treasury of the Colony of Connecticut in a Recognizance of two pounds that John Chester of Weathersfield shall prosecute the attachment he hath now taken out against William Meserve of Lime at the Court to be Holden at Hartford on the 13th. day of the eighth month next, to full effect and answer all Damages in case he make not his plea good.

"Dated in Hartford the 22nd day of September, 1670.

"Acknowledged before me,

John Allyn, Sectt."¹

The earliest legislation upon this subject in New England was probably contained in the Body of Liberties adopted in 1641 by Massa-

**Section 24.
Costs of
Court.**

chusetts. By Article 37 it was enacted that: "In all cases where it appears to the Court that the plaintiff hath wilfully and wittingly done wrong to the defendant in commencing

and prosecuting any action or complaint against him, they shall have power to impose upon him a proportionable fine to the use of the defendant, or accused person, for his false complaint or clamor." This law was for the benefit of the defendant, but did not benefit the plaintiff, and it was accordingly supplemented in 1642 by a statute passed on May 20, 1642, declaring that if the Court "shall finde the defendant in fault, they shall impose the charges upon such defendant."²

At a Court of the Assistants held at Boston on the 27th day of the Second month (April), 1642, at which were present Governor Winthrop, Deputy Governor Endicott, Mr. Dudley, Mr. Bellingham, Mr. Flint and Increase Nowell, it was ordered that John Stowe and Joseph Arnitage recover ten shillings costs against Joshua Hubbard for not presenting. On the 7th day of the Fourth month, 1642, the same court, reinforced by Mr. Bradstreet and Mr. Stoughton, granted Mr. Edward Paine six shillings six pence costs against Clement Campion, for the latter's failure to enter his action against Paine.³

The bulk of our common law consists of the reasons assigned by the courts in deciding particular cases. These reasons have always been considered the life or spirit of the law, and have been regarded as precedents binding upon the courts in subsequent cases where the like questions were involved. To preserve these reasons in permanent form, and to render them accessible to the public, printed reports of decisions were encouraged by the bench and bar, and sometimes authorized by the legislature. In some States, the judges of the highest court were

**Section 25.
Reasons for
Judgment.
Authority for
Precedents.**

¹ Judicial History Conn., 86, 87, (1895).

² Whitmore's Sketch of Colonial Laws, Preface XXXIV.

³ Whitmore's Sketch Colonial Laws, Preface XXXII

required by law to give their reasons in writing.¹

In Connecticut as early as 1785, an act was passed requiring the judges of the Supreme Court of Errors and of the Superior Court to file written opinions, containing the grounds and reasons of the judgment, with the clerk of the Superior Court.²

It was not uncommon for a person to be indicted and tried for one crime, and to be found guilty and punished for another crime. In

**Section 26.
Punishment
for Crime
other than
that Charged
in Indictment.**

1645, Henry Dawson and Mrs. Hudson were put on trial upon the charge of adultery. The jury found them not guilty of adultery, but guilty of adulterous behavior, and the magistrates sentenced and punished them for the latter offence.³ To prevent this practice, probably, the form of the juror's oath was changed, to the effect that if the jury found the accused not guilty of the crime charged they should say so "and no more."⁴ Sometimes the verdict was that there were strong grounds of suspicion that the accused was guilty, but not sufficient evidence to convict him, and upon such verdicts the court sentenced the prisoner for what they considered him guilty of, although this offence had not been charged in the indictment, nor found by the jury.⁵

Where the punishment was death, the jury were often reluctant to return a verdict of guilty, especially when the accused was young and inexperienced. The cases of Robert Wyar and John Garland were of this character. They were indicted and tried in 1642 for ravishing

two young girls; but the jury found them not guilty, because the penalty was death. The court, however, after a confession by the boys of a smaller offence, sentenced them to be openly whipped at Boston on the next market day, and again at Cambridge on the lecture day, and each of them to pay a fine of £5 apiece to their master in service. The girls having also confessed were sentenced to be severely whipped at Cambridge in the presence of the secretary.⁶

The writs of *habeas corpus* and *de homine replegiando* were early employed in New England. In 1686 the action of *trover* or conversion by Nelson v. Brooks was "removed by *habeas corpus*" from the Court of Pleas for Suffolk County into the Superior Court. The Superior Court abated the writ; and allowed

**Section 27.
Habeas
Corpus
and
Personal
Replevin.**

the defendant £2 3s. 2d. as costs of court.⁷ This was certainly a queer method of removal, and the costs imposed upon the plaintiff seem none too large. In 1689 Judge Dudley refused to issue this writ upon the application of Rev. Mr. Wise, for which refused a suit for damages was brought after the revolution in New England; from which Governor Washburn draws the conclusion that "the right to this writ was regarded as one of the existing privileges of the colonists."⁸ By a Provincial act passed in 1692, the power of granting writs of *habeas corpus* was expressly conferred upon the justices of the Superior Court,⁹ the predecessor of the Supreme Judicial Court of Massachusetts.

The writ of personal replevin has fallen into disuse, and *habeas corpus* is now generally em-

¹ Mass. Pub. Sts., c. 150, sec. 13.

² *Seriff's System*, p. 45.

³ *Judicial History Conn.* 142.

⁴ *Savage's Writings*, II, 305.

⁵ *Washburn*, 45.

⁶ *Hutchinson*, I, 401.

⁷ *Records of the Court of Assistants*, No. 2060.

⁸ *Whitmore's Colonial Laws, Mass.*, Preface XXXI.

⁹ *Washburn*, 99.

¹⁰ *Judicial Hist.*, Mass. 196.

¹¹ *Washburn*, 152.

played to accomplish the same purpose. In 1806, two cases involving writs of personal relevin were decided by the Supreme Judicial Court of Massachusetts, and in 1844 another case of the same writ was decided by this court.¹ The only successful use of the writ within recent years was made by General Benjamin F. Butler in a case arising in a Federal court within the district of Massachusetts. The present laws of Massachusetts allow the use of this writ.²

The germ of advisory opinions by judges to the executive and legislative departments may be traced back to the early days of the settle-

**Section 28.
Advisory
Opinions by
Ministers,
Elders and
Judges.**

ment of the country. The ministers and the elders then held a commanding position in all public affairs, and it was a common practice for the General Court, or for one branch thereof, and for the Governor and Council, to request and to receive advice from the ministers or elders acting as a body, and as a separate tribunal. Their answers were generally based upon the word of God as revealed in the Bible. The early settlers had more reverence for the laws of Moses than for the laws of England.

In 1634 the Governor and Assistants requested the advice of the ministers upon these two questions: 1. What ought to be done if a general governor should be sent out of England? 2. Whether it be lawful for us to carry the cross in our banners? At a meeting of all the ministers except Nathaniel Ward of Ipswich, held at Boston, they all agreed, that, if a general governor were sent, the Massachusetts Colonists ought not to accept him, but defend

their lawful possessions (if they were able); otherwise to avoid or contract. Upon the second question the ministers were divided, and accordingly deferred their answer to another meeting.³

Liberty No. 1 of Massachusetts ordained that in the absence of an express law of the country, judicial matters were to be determined "by the word of God." There was nothing in the Charter or Patent which authorized such a rule of decision, but the rule was freely enforced by the courts. In 1644, the General Court requested the opinion of the elders as to whether the magistrates should be guided by the word of God in such case, and the elders replied in the following terms: "We do not find that by the Patent they are expressly directed to proceed according to the word of God; but we understand that by a law or liberty of the country, they may act in cases wherein as yet there is no express law, so that in such acts they proceed according to the word of God."⁴

In 1644, the opinion of all the ministers of Massachusetts was requested by both the magistrates and the deputies upon several questions relating to the respective powers of these two branches of the legislature.⁵

In 1692, during the witchcraft trials at Salem, the Governor and the Council requested the opinion of several of the principal ministers upon the state of things as they then stood, and on June 15, 1692, five days after the execution of the first witch at Salem, the ministers returned a formal reply in writing.⁶

Before the settlement of New England, the practice was well established in England of requiring the opinion of the twelve judges of

¹ Wright v. Wright, 2 Mass. 169.

² Williams v. Blunt, 2 Mass. 267.

³ Aldrich v. Aldrich, 8 Metcalf, 102.

⁴ Mass. Pub. Statutes, c. 185, sections 40-55.

⁵ Savage's Winthrop, I, 183.

⁶ Mass. Records, II, 91.

⁷ Hubbard, 395-401.

⁸ 2 Hutchinson, 49-51 (2d ed.).

the highest standing. The right to demand their opinion was lodged in the King and in the House of Lords, but did not extend to the House of Commons. During the reign of the Stuarts, this power was greatly abused by the King in requesting the judges' opinion upon questions about to come before them in their judicial capacity. The House of Lords had the right to demand the judges' opinion upon matters relating to their legislative duties as well as upon matters relating to their judicial duties.

In Massachusetts and in other States the right to demand the opinion of the justices of the highest court, extends to the House of Representatives as well as to the Senate and the Executive. The Massachusetts Constitution of 1780, which upon this subject has remained in force to the present day, ordained that "each branch of the Legislature, as well as the Governor and Council, shall have authority to require the opinions of the Justices of the Supreme Judicial Court upon important questions of law, and upon solemn occasions."¹ Similar provisions are contained in the Constitution of New Hampshire of 1781, in the Constitution of Maine of 1820, and in the Constitution of Rhode Island of 1843, which was its first Constitution, excepting the Charter of 1663.

In Maine, New Hampshire and Massachusetts, the judges have given advisory opinions in a large number of instances and upon a great variety of questions. Many of them relate to constitutional questions, and to the powers and functions of the legislative and executive departments. The judges in giving opinions of this nature act merely as the constitutional advisers of the other departments, and not as a

court. Their opinions have not the force or effect of a judgment.² The governor and the legislature may accept or reject the views of the judges. In practice, the judges' views have generally been accepted. In one case, the opinion of Chief Justice Parsons and Justices Sewall and Parker was overruled by the Supreme Court of the United States. In August, 1812, the governor of Massachusetts requested the opinion of the justices upon the question as to whether the commander-in-chief of the militia has the right to determine whether an exigency exists in fact which authorizes the president of the United States in calling out the militia. The justices answered in the affirmative, that this power rested with the governor of the State, and not with the president.³ In 1827, this question came before the Supreme Court of the United States, which held, in an opinion by Judge Story, that the president under the Act of Congress of February 28, 1795, is the exclusive and final judge of whether such an exigency exists.⁴

In 1840 the justices of the Supreme Judicial Court of Maine gave an important opinion upon the constitutional power of the legislature to grant divorces. The questions were propounded by the Senate, and Chief Justice Weston and Justices Emery and Shepley replied that in their opinion the legislature possessed the power to grant divorces in cases where the Supreme Judicial Court had no jurisdiction, but did not possess that power in cases where that court had jurisdiction.⁵

In New Hampshire, the seven judges of the Supreme Court in answer to a question stated by the House of Representatives, expressed the opinion that the legislature could pass a law

¹ Mass. Const., ch. 3, art. 2.

² Opinion of the Justices, 136 Mass. 566.

³ Opinion of the Justices, 40 N. H. 585.

⁴ Opinion of the Justices, 8 Mass. 548.

⁵ Martin v. Mott, 13 Wheaton, 19.

⁶ Opinion of the Justices, 16 Maine, 478.

without prior notice to parties interested, although a general statute was in force requiring notice to be given in advance. The judges pointed out the distinction between legislative and judicial proceedings upon this subject. The requirement of notice in advance of judgment is essential in the latter but not in the former, and one legislature cannot fetter the action of a later body by an act requiring notice.¹

One of the most interesting cases of this nature arose out of the so-called Dorr Rebellion in Rhode Island. In 1841, Thomas W. Dorr was convicted of treason and sentenced by the Supreme Court. At the January session of the General Assembly in 1854, the legislature passed an act reversing and annulling the judgment against Dorr. At the June session, 1854, the Senate and the House of Representatives requested the opinion of the justices of the Supreme Court upon the constitutionality of the act passed at the January session, 1854. Justices Greene, Halle, Staples and Brayton replied that the statute in question was an exercise of judicial power by the General Assembly, and was therefore unconstitutional.²

In Connecticut, the advice of the judges has been very seldom requested. Only three times since she became an independent State, has the legislature required their opinion upon questions of constitutional law. The first instance occurred in December, 1862, in relation to a statute allowing soldiers in the military service of the United States to vote for State officers outside the borders of the State. The judges of the Supreme Court of Errors replied that in their opinion the statute was repugnant to the State Constitution;³ and the Constitution was

accordingly amended so as to allow such voting. In answer to a question propounded by the legislature in 1865, the judges held that a negro was a citizen.⁴ In 1867 the court declined to answer a question as to whether the State had the constitutional power to tax the income of United States bonds.

The Constitutions of Vermont have contained no provision requiring the judges to advise the other departments of the government. This omission is probably accounted for by the fact that there was a Council of Censors, whose duties were somewhat analogous to that of giving extra judicial opinions. A statute, however, in this State confers upon the governor the authority to require the opinion of the judges of the Supreme Court upon questions of law relating to the discharge of his duties. In 1863 the General Assembly passed an act which was approved by the governor, allowing soldiers in the service of the United States to vote at places outside of the State. The 12th section of the same statute declared that "this act shall not take effect until the governor submits the same to the judges of the Supreme Court, with the inquiry, 'Are the provisions of this act constitutional?' and until the governor has obtained in writing the opinion of said judges thereon; and if the said judges decide that the provisions of the act, or certain parts thereof, are unconstitutional, then the same, or such parts thereof as said judges shall decide are unconstitutional, shall be null and void, and the residue thereof shall remain in full force and virtue." The governor accordingly requested the opinion of the judges, who replied that the statute was constitutional as applied to the election of members of congress and presidential

¹ Opinion of the Court, 63 N. H. 625 (1885).

² Opinion of Justices, 3 R. I. 299.

³ Opinion of Judges, 20 Conn. 591.

⁴ Opinion of Judges, 32 Conn. 565.

⁵ Reply of the Judges, 33 Conn. 586.

electors, but was unconstitutional as applied to the election of State officers.¹

Outside of New England, there are only two or three States in which this practice prevails.

The judges of the Federal Courts cannot be required to give advisory opinions, and they

have never expressed opinions of this character. President Washington requested the opinion of the judges of the Supreme Court upon one occasion in 1793, but they declined to answer.

CHAPTER III.

ATTORNEYS, COUNSELLORS AND BARRISTERS.

Thomas Morton is described by Governor Bradford as "a kind of a pecc-fogger of Farnells Inn"; but he appears to have been educated for the bar in England

Section 20.

Thomas

Morton.

and to have come to Massachusetts in 1624 or 1625, with Captain Wollaston, and to have settled at Mount Wollaston, now in Quincy. For three or four years he was a thorn in the side of the pious fathers of the Colony. He held high carnival at his place, which he named Merry Mount, and became lord of misrule and a teacher of atheism. He set up a May-pole, to which he invited the Indian women, and spent his time in drinking and dancing and composing "rimes and verses." He also sold guns and powder and shot to the Indians and taught them how to use them with deadly effect. He was warned by the chiefs to desist, but he defied them, and barricaded himself in his house. Accordingly, their patience being exhausted, Captain Myles Standish was sent to arrest him in 1628, and finally captured him in his house with arms in his hands, but too drunk to use them. He was

then set in the "bailows" and shipped back to England. The expense of this expedition against Morton was assessed upon eight different plantations. In 1637 he published a book about Massachusetts, entitled "New English Canaan," which Governor Bradford says was an infamous and scurrilous book, full of lies and slanders against many godly and chief men of the country; for which and other matters, being then "grown old in wickedness," he was subsequently imprisoned in Boston.²

Mr. James Savage in his valuable notes to Winthrop's History of New England, page 41, expresses the opinion that Morton sailed in the *Charity* and arrived in June, 1622, several years earlier than Governor Bradford states. Upon the title page of his book Morton described himself as "of Cliffords Inn, Gentleman," and claimed to have had ten years' knowledge and experience of the country.

To defray the charges of Morton's transportation back to England, to pay his debts in Massachusetts "and to give satisfaction to the Indians for a canoe he took unjustly from them,"

¹ Opinion of the Judges, 37 Ct. 663.

² Bradford's History of Plymouth Plantation (ed. 1898), pp. 284-291, 303.

Washburn, 34, 58.

Hubbard, 103, 425-431.

Davis's Morton, 136-141.

it was ordered by the Court on September 7, 1639, that all his goods should be seized and his house burnt to the ground in sight of the Indians.¹

It was Thomas Morton who originated the ludicrous story of vicious punishment which is thus described in Butler's Hudibras:

"Our brethren of New England use
Choice malefactors to excuse,
And hang the guiltless in their stead,
Of whom the churches have less need.

A precious brother having slain,
In time of peace, an Indian.

The mighty Totipotimoy
Sent to our elders an envoy,
Complaining sorely of the breach
Of league, held forth by brother Patch.

For which he craved the saints to render
Into his hands, or hang the offender.
But they, maturely having weighed,
They had no more but him of the trade,—
A man that served them in a double
Capacity, to preach and colble,—
Resolved to spare him; yet to do
The Indian Hlogan Mogan too
Impartial justice, in his stead did
Hang an old weaver that was bed-ridden."

Hulldard seems to think that there was a grain of truth in this story.²

Nathaniel Ward, the author of the *Body of Liberties* and the "Simple Colder of Agawam," studied and practised law in England for at least

Section 30. eight years (1607-1615). In
Nathaniel 1618 he entered the ministry,
Ward. and continued to preach until he was suspended for Puritanism in 1633 by Archbishop Laud. In 1634 he arrived in Massachusetts, and settled at Ipswich. His great work, the *Body of Liberties*, consisting of one hundred fundamental laws, was prepared about 1638: in 1639 it was presented to the General

Court and to the governor and deputy governor; and in 1641 it was adopted by the people. This body of laws was a masterpiece and to it may be traced many of the laws now in force. He is also entitled to credit for stopping the practice of the magistrates in giving private advice to parties before the case came to a public hearing.³

Richard Bellingham was bred a lawyer in England, and came to Massachusetts in 1634. He was one of the original patentees named in the Charter, and played a prominent part in the public affairs of the Colony. He was elected a magistrate or assistant in 1635, and served for many years. In 1641 he was elected governor. He was particularly noted for his sterling honesty, being a great hater of bribes in every form, and for his sound judgment. He was not a fluent speaker, being, as Hulldard quaintly expressed the idea, "like a vessel whose vent holdeth no good proportion with its capacity." He died at Boston, December 7, 1672, aged eighty years, and was buried in the old Granary burial ground.⁴

Thomas Leckford was at one time, about 1640, the only attorney practising in Massachusetts who had been educated for the bar. Washburn aptly describes him as "the embodied Bar of Massachusetts Bay," and states that he came to the Colony in 1637 to seek his fortune in the practice of his profession. He argued and disputed with the magistrates, however, and rendered himself very unpopular, and in 1639 he was disbarred.⁵ It may have been his conduct which led to the adoption of Liberty No.

¹ 1 Savage's Winthrop, 41, 42.

² Hist. New England, 77 (ed. 1848).

³ Savage's Winthrop, I, 183 note, 388; II, 42, 69;

Whitmore's Colonial Laws, Introduction, 8, 9, 18.

⁴ Hulldard, 610;

Savage's Winthrop, I, 173 note; II, 36, 41.

⁵ Washburn, 33, 34;

⁶ Savage's Winthrop, 43, 44.

26 in 1641, prohibiting the payment of a fee or reward for attorneys' services. Shortly afterwards he returned to England and within a few years Liberty No. 26 was repealed. If he had remained in Massachusetts and had left successors of the same type of character, Liberty No. 26 might still be in force.

Roger Ludlow was probably the only man among the early settlers of Connecticut who had received a legal training in England. He

Roger Ludlow. took a prominent part in framing the "Fundamental Orders" of 1639, inspired by the famous sermon of Thomas Hooker, preached before the General Court at Hartford, May 31, 1638. Ludlow is especially distinguished as the author of the first Connecticut Code of 1650. In 1646 he was requested by the General Court to prepare this Code, or "Body of Lawes," and was engaged upon the work four years. His Code displays great ability and research, as well as originality, and was the most elaborate of its time in New England.¹

Many of the early governors and magistrates were educated for the bar in England, but never practised law in this country. The most conspicuous among these were Winthrop, Bellingham, Dudley and Humphrey.² It is to the originality and constructive ability and independence of these men that we owe many improvements in American law upon early English law.

During the whole of the Colonial period, the legal profession stood very low in the scale of morals. It is, however, consoling to know that most of the attorneys who practised at this time were not level to the bar, but had been in trade or business of one kind or another.

Amos Richardson was a tailor; Chockley, and Watson, and Coggan, were merchants, and the famous Bullivant was an apothecary and physician. During the century preceding the Revolution, however, the character of the legal profession improved greatly, and it had many learned, able and upright members. The English distinction between barristers and attorneys was preserved in Massachusetts. In 1768 there were twenty-five barristers in Massachusetts, among whom were Richard Dana, James Otis, jr., and Samuel Quincy of Boston; John Lowell of Essex; James Putnam of Worcester; Robert Treat Paine of Bristol, and Pelham Winslow of Plymouth.³

As late as 1806 the term "barrister" was used in the rules of the Supreme Judicial Court of Massachusetts, adopted at the March term of that year.⁴

In Connecticut there seem to have been no grades in the profession; the name barrister was not employed, and all lawyers were called attorneys, and could plead at the bar, as well as transact any other legal business.⁵

The barristers as well as the judges wore gowns, bands and wigs. Upon the hearing of Paxton's case, Quincy's Reports, 51, in 1761, relating to writs of assistance. **Wigs and Gowns.** their appearance is thus described by President John Adams in a letter to Mr. Tindor: "In this chamber were seated at a long table all the Barristers of Boston, and its neighboring County of Middlesex, in their gowns, bands and (ye-wigs. They were not seated on ivory chairs, but their dress was more solemn and more pompous than that of the Roman Senate when the Gauls broke in upon them."⁶

¹ Judicial Hist. Conn. 10, 13, 64 (1885).

² Savage's Winthrop, II, 44 note.

³ Washburn, 51, 200, 201.

⁴ 2 Mass., 73, Rule IV.

⁵ Swift's System, vol. 1, p. 162.

⁶ Washburn, p. 165.

The low esteem in which the forefathers held lawyers is also evidenced by the way they treated the legal profession in the matter of

Section 31.
Attorneys' Fees. By Article No. 26 of the Body of Liberties, adopted in 1641, it was expressly provided

that "Every man that undertaketh himself unfit to plead his own cause in any court shall leave the liberty to employ any man against whom the court doth not except, to help him, provided he give him no fee or reward for his pains." This statute seems to have remained in force for a few years only, however, and was probably dropped prior to 1649. It is certain that it was not inserted in the Revision of the Statutes of 1680, which purported to contain all the statutes then in force.¹

As has been elsewhere suggested, Thomas Leckford was probably the cause of the adoption of this so-called liberty, and as he left Massachusetts Bay in disgrace in 1641, and returned to England, it is possible that the statute was repealed shortly after his departure.

About the year 1686, a table of attorneys' fees was established in Massachusetts, and attorneys were obliged upon admission to the bar to take oath, not only that they would not charge larger fees than those established by law, but that they would be "contented with such fees" as were allowed by the Council, or by the judges of the Superior Court.²

The legislative attempts to regulate attorney's fees have been few and short lived.

Since the Revolution, if not before, counsel as well as attorneys have been allowed to re-

cover fees for professional services in an action at law; contrary to the English rule with respect to counsel. In the absence of a special agreement with the client, the fees should be commensurate with the value of the services performed by the attorney or counsel, some regard being paid to his standing in the profession for learning and skillfulness.³

The courts early adopted rules and orders respecting admission to the bar. In Massachusetts, an order was passed on July 26, 1686, regulating the admission of attorneys, and at this time
Section 32.
Admission to the Bar. Titus Masters, Anthony Checkley, John Watson, Nathaniel Thomas and Christopher Webb were, upon taking the oath, admitted as attorneys.⁴

Since the time of Lord Holt (1701) the attorney's oath of office has required him to conduct himself "in the office of an attorney within the courts" according to the best of his knowledge and discretion, and with all good fidelity as well to the courts as to his clients. In addition to this oath he has, since the Revolution, been obliged to take the oath to support the Constitutions of the United States and of the State in question.⁵

In 1785 it was enacted that no person should be admitted to practice law in Massachusetts until he had taken and subscribed the attorney's oath of office.⁶ This statute remained in force until 1836, and during this time no person who had not complied with the terms of this statute, even if he had been regularly admitted in a sister State, could recover fees for

¹ Whitmore's Colonial Laws Massachusetts, pp. 1, 27, 28, 29.

² Washburn, 88, 89.

³ Viles v. Dwyer, 21 Vermont, 419.

⁴ Briggs v. Georgia, 10 Vermont, 68.

⁵ Brackett v. Norton, 4 Conn. 517.

⁶ Smith v. Davis, 45 N. H. 567.

Ames v. Potter, 7 R. I. 265.

⁷ Colman v. Armstrong, 28 Maine, 91.

⁸ Hallett v. Oakes, 1 Cushing, 296.

⁹ Washburn, 88.

¹⁰ Gray, C. J., in Robinson's Case, 151 Mass. 370, 373.

¹¹ Mass. St., 1785, c. 33.

hisservices performed in this State.¹ In Maine, a somewhat similar statute was enforced as late as 1874.²

In 1806 it was provided by a rule of the Supreme Judicial Court that "No attorney or counsellor shall hereafter be admitted without a previous examination." At the same time examiners were appointed by the court from among the leading barristers and counsellors for the counties of Suffolk, Essex, Middlesex, Hampshire, Bristol, Worcester, York, Cumberland, Lincoln, Kennebec, Plymouth and Berkshire. Those appointed for Suffolk county were Messrs. Parsons, Gore, Dexter, Otis, W. Sullivan and C. Jackson. For Essex county, Messrs. Dane, Livermore, Prescott, Putnam and Story were appointed. Middlesex was represented by Messrs. Ward, T. Bigelow and Dana.³

This practice of appointing bar examiners for the several counties continued until 1897, when a statute was passed establishing a State board of bar examiners, consisting of five members, no two of whom shall reside in the same county.⁴

The power to make reasonable rules for the admission and removal of members of the bar "is inherent in every court,⁵ and has been frequently exercised by the courts.⁶ An attorney is generally regarded as an officer of the court, and as such is subject to all reasonable rules and regulations adopted by the court relating to the practice of the law. In Massachusetts this rule prevailed as early as 1701.⁷

In Connecticut the first statute relating to the admission of attorneys was enacted in 1708. This statute, however, contemplated an ap-

proval by the court in each particular case in which an attorney appeared, and did not provide for the general admission of attorneys. It was not until 1750 that Connecticut passed an act with respect to the general admission of attorneys to practice. This statute of 1750, with a few verbal changes, remained in force until 1890, in which year a State examining committee of fifteen members was established.⁸

The act of 1708 declared "that no person except in his own case, shall be admitted to make any plea at the bar without being first approved of by the court before whom the plea is to be made, nor until he shall take in the said court the following oath, viz.: You shall do no falsehood, nor consent to any to be done in the court, and if you know of any to be done, you shall give knowledge thereof to the justices of the court, or some of them, that it may be reformed. You shall not wittingly and willingly promote, sue, or procure to be sued, any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for here or malice, but you shall use yourself in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity, as well to the court as to the client. So help you God."

In 1795 the rule or custom had become established in Connecticut that no candidate for the bar would be admitted unless he had served an apprenticeship in a law office for two years, in case he had enjoyed a liberal education, and for three years, in case he had had only a common education.⁹

The modern methods of the trust to restrict

¹ *Ames v. Gilman*, 10 Metcalf, 339.

² *Perkins v. McDuffee*, 63 Maine, 181.

³ 2 Mass., 72, 73, 75.

⁴ Mass. St., 1897, c. 598.

⁵ *Bryant's case*, 24 N. H., 149 (1857).

⁶ *Manning v. French*, 149 Mass., 391, 398-9.

⁷ 121 Mass., 600.

⁸ Washburn, 189.

⁹ *In re Hall*, 50 Conn., 681;

Judicial Hist. Conn., 185, 186 (1895).

¹⁰ *Swift's System*, vol. 1, p. 103.

competition were tried for one year in Connecticut with respect to attorneys. By the statute of 1730 it was enacted as follows: "That there shall be allowed in the Colony eleven attorneys and no more, viz.: Three attorneys in the County of Hartford, and the other four counties to have two attorneys to plead at the bar in each respective county, and no more." Fortunately for the profession as well as for the community this statute was repealed in 1731, and the policy has not since been revived.¹ It is perhaps needless to observe that the former statute did not originate in a desire on the part of the lawyers to increase their own profits by limiting the number of legal practitioners; and this is sufficient to prove that no lawyers' trust existed or was contemplated.

The courts from the earliest times have asserted the power to remove attorneys for malpractice, crimes and offences of many kinds.

Section 33. Proceedings for disbarment are **Disbarment.** not of a criminal nature; they do not require a presentment by a grand jury; nor is the attorney entitled to a trial by jury. Their "primary purpose is not punishment, but the preservation of the purity of the courts and the protection of the public from attorneys who disregard their oath of office."²

The first attorney in New England to suffer disbarment was Thomas Leekford. His offence consisted in "going to the Jewry and pleading with them out of Court." The Quarter Court in September, 1639, accordingly disbarred him "from pleading any man's cause hereafter, unless his own."³ In 1641 he returned to Eng-

land, where he had been educated for the bar, and revenged himself by publishing in 1642 his book entitled "Plain Dealing, or News from New England."⁴ Not being allowed to practice law in Massachusetts, he earned a scanty living for two years by copying papers and we are under a deep obligation to him for making the only contemporaneous copy of the manuscript of the *Body of Liberties* of 1641 now in existence.⁵

Attorneys who indulged in sharp practice were sometimes lectured in open court. Judge Sewall in charging the grand jury in the new Town House of Boston on May 5, 1713, admonished the attorneys in the following quaint phrases, which were then in vogue: "Let this large transparent costly glass serve to oblige the attorneys always to set things in a true light. May that proverb, 'Golden chalice and wooden priests,' never be transferred to the civil order, and let the character of none of them be 'Imper Sibi.' Let them remember they are to advise the court as well as plead for their clients."⁶

Within the present generation the question of the right of women to practice law has received much attention. By the common law of England and America down to the Revolution women could not become attorneys at law.

Section 34.
Women as Attorneys.

The question has given rise to much difference of opinion among the courts of New England. In 1881 it came before the Supreme Judicial Court of Massachusetts in Robinson's case, 131 Mass., 376, and it was held in an elaborate

¹ Judicial Hist. Conn. 181 (1896).

² Ex parte Bromsall, Cowper, 829;
Randall, petitioner, 11 Allen (Mass.), 473;
Kimball's Case, 61 Maine, 140;
Bryant's Case, 24 N. H., 149;
Boston Bar Association v. Greenwood, 168 Mass., 169,
183.

Delano's Case, 58 N. H., 5.

³ Washburn, 33, 34.

⁴ Whitmore's Sketch of Colonial Laws, 8, 9. This copy is known as the Hutchinson manuscript and is now (1896) in the custody of the Boston Athenæum.

⁵ Sewall's Journal, quoted in Wash. Jud. Hist. Mass., 262.

opinion by Mr. Chief Justice Gray that according to the then existing laws women could not be admitted to practice as attorneys. In 1882 the same question arose in Connecticut and in 1890 in New Hampshire, in both of which cases the courts held that women were eligible to the bar.¹

In 1882 the legislature of Massachusetts reversed the rule announced by the court, and enacted that "the provisions of law relating to the qualification and admission to practice of attorneys at law shall apply to women;"² and since then many women have been admitted to the bar.

The right to practice law in the State courts is not a "privilege or immunity" of a citizen of the United States, and therefore, although a woman may be a citizen of the United States, she is not entitled under the Constitution to act as an attorney at law. Each State has the power to prescribe the rules and qualifications for admission to the bar of its own courts, and the exercise of this power is not affected by the Federal Constitution, and cannot be controlled by the Federal Courts. In the Supreme Court of the United States, however, and in many of the lower Federal Courts, women are admitted to practice upon the same terms as men.³

CHAPTER IV.

THE POWER OF THE JUDICIARY TO DISREGARD UNCONSTITUTIONAL STATUTES.

I. INTRODUCTORY.—II. EARLY CASES AND OPINIONS UPON THIS POWER.—III. CAUSES WHICH LED TO THE GENERAL ADOPTION OF THIS POWER.—IV. LIMITATIONS OF THIS POWER.—V. EXTENT AND EFFECT OF THIS POWER.

I. INTRODUCTORY.

The judicial system of the United States is distinguished from that of every other country by the power of the judicial courts to declare statutes unconstitutional and void, and to disregard such statutes in deciding upon the rights of parties judicially before the court. In no other country does this power exist. It is a distinctive characteristic of the courts held within the territory of the United States; and the power

is exercised by both the State Courts and the Federal Courts. It is true that several English judges have said in effect that an Act of Parliament contrary to common reason or the laws of nature, was void; but no English court in being has ever expressed such an opinion; nor has this power been recognized or conceded to exist in the courts by Parliament or by the Crown, or by the English people. On the contrary, Parliament is omnipotent, and can change the English Constitution at any time by a simple act of legislation, and the English courts

**Section 35.
Distinguishing
Characteristic
of our Judicial
System.**

¹ In re Ha3, 50 Conn. 131;

Richer's Petition, 66 N. H. 267.

² Mass. St. 1882, c. 139, approved April 10, 1882.

³ Bradwell v. State, 16 Wallace, 130.

In re Lockwood, 154 U. S. 114.

are bound to enforce the new statute, however inconsistent with their views it may be.¹

The fact that England has no written constitution, while America has written constitutions, does not account for this difference in the judicial systems of the two countries. France, Switzerland and Germany have also written constitutions, but their courts have no power to pronounce laws unconstitutional.

In all countries, except the United States, this power of passing upon the constitutionality of statutes or proposed statutes is not conferred upon the judicial department, but upon some other department of the government, or rests with the voters in the exercise of their political rights. In France, for instance, the Constitution ordains that the legislature shall not pass laws of a certain nature; but these constitutional provisions are only binding upon the consciences of the members of the legislature, and cannot be enforced by the courts even for the protection of private rights.² Until a statute is repealed by the legislature, the courts must give effect to it, and the rights of individuals are governed by it. The judiciary merely construes the statute in foreign countries, and does not undertake to deny the power of the legislature to pass the law.

Upon this subject De Tocqueville in his "American Institutions" remarks: "Confederacies have existed in other countries beside America; I have seen Republics elsewhere than upon the shores of the New World alone; the representative system of government has been adopted in several States of Europe; but I am not aware that any nation of the globe

has hitherto organized a judicial power in the same manner as the Americans."³

On pages 128 and 129 of the same work, De Tocqueville adds: "This power is the only one which is peculiar to the American magistrature, but it gives rise to immense political influence. In truth, few laws can escape the searching analysis of the judicial power for any length of time, for there are few which are not prejudicial to some private interest or other, and none which may not be brought before a court of justice by the choice of parties, or by the necessity of the case. . . . The political power which the Americans have intrusted to their courts of justice is therefore immense; but the evils of this power are considerably diminished by the impossibility of attacking the laws except through the courts of justice. If the judge had been empowered to contest the law on the ground of theoretical generalities—if he were able to take the initiative, and to censure the legislator—he would play a prominent political part; and as the champion or antagonist of a party, he would have brought the hostile passions of the nation into a conflict. But when a judge contests a law in an obscure debate on some particular case, the importance of his attack is concealed from public notice; his decision bears upon the interest of an individual, and the law is slighted only incidentally. . . . I am inclined to believe this practice of the American courts to be at once most favorable to liberty and to public order. . . . Within these limits, the power vested in the American courts of justice, of pronouncing a statute to be unconstitutional,

¹ Blackstone's *Com.*, 160.
Vanhorn v. Dorrance, 2 Dallas (U. S. Cir. Ct.) 304, 307, 308.

² Dicey, *Law of the Constitution*, ch. II, p. 125 (3d ed., 1889).

Bryce, *Am. Com.* I, 439, note (1st ed.);
Const. Hist. U. S., Preface by Henry W. Rogers, pp. 10-13.

³ *American Institutions*, p. 123, ch. VI (Prof. Bowen's edition 1879).

forms one of the most powerful barriers which has ever been devised against the tyranny of political assemblies."

A. V. Dicey in his work on "The Law of the Constitution" (3d ed. 1889), page 128, referring to this peculiarity of the American judicial system, says: "This system, which makes the judges the guardians of the Constitution, provides the only adequate safeguard which has hitherto been invented against unconstitutional legislation."

Hon. Charles Andrews, lately chief judge of the New York Court of Appeals, well says in an address delivered on June 27, 1898, before the Yale University Law School, and published in 58 Albany Law Journal, page 9: "The real security against unconstitutional legislation is found, not in the limitations of the Constitution, but in the fact of the existence of one independent body clothed with the function of measuring the validity of legislation by the test of the Constitution."

The fundamental conception underlying this power of the courts and upon which it is founded, is the Supremacy of the Constitution;

**Section 30.
Supremacy
of the
Constitution.**

the idea that the act of the people in adopting a Constitution is of higher authority than the act of the people's representatives in enacting a statute. It is expressly provided in the Constitution of the United States that it shall be "the Supreme law of the land." Some of the State Constitutions contain like provisions with respect to the States. But the conception of the Constitution's supremacy originated before the adoption of the Federal Constitution, and irre-

spective of an explicit declaration to that effect in any State Constitution. This appears from several cases decided prior to 1789, holding State statutes unconstitutional, although the Constitutions in question were silent in regard to constitutional supremacy.¹

In the great case of *Marbury v. Madison*, 1 Cranch, 137 at 177, Chief Justice Marshall said upon this point: "It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it, or that the legislature may alter the Constitution by an ordinary act. Between these alternatives there is no middle ground. The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the Constitution is not law; if the latter part be true, then written constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable. Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the legislature, repugnant to the Constitution, is void."

The conception of the supremacy of the Constitution also originated in the United States, and was not recognized in any other country until long after it was firmly established in America.

James Wilson, in a speech delivered on November 26, 1787, in the Convention of Penn-

this case President Pendleton suggested to the legislature "The propriety of making the principles of the Constitution the great rule to direct the spirit of their laws." Page 18.

¹ *Trevett v. Weeden*, Rhode Island Supreme Court, Sept. 1786; Pamphlet by J. W. Varnum (1787); S. C., 2 Chandler's Crim. Trials, 309; *Commonwealth v. Eaton*, 4 Call. (Va.), 5 (1782). In

sylvania, on the expediency of adopting the Federal Constitution, says: "To control the power and conduct of the legislature by an overruling constitution, was an improvement in the science and practice of government reserved to the American States."¹

In Vermont and Connecticut, however, the doctrine of the supremacy of the Constitution was not adopted or generally recognized until after the adoption of the Constitution of the United States.²

Writing in 1795, Judge Swift of Connecticut, said upon this subject: "A question of importance has been agitated respecting the power of a legislature to alter the Constitution of a State. But it is generally agreed that where a Constitution has been framed by the people at large, by convention appointed for that purpose, or by the tacit agreement of the people, that no legislature has the power to alter it, and that the right rests in the people alone."³

The conception of a supreme law relating to fundamental matters adopted by the people, and to be of a higher character than ordinary statutes, was clearly marked out by the early settlers in Massachusetts and Connecticut. The famous "Body of Liberties" adopted in 1641, containing one hundred fundamental laws, embodied this conception in permanent form. The preamble to this body of laws declared that these following rights, liberties and privileges "shall be inviolably enjoyed and observed throughout our jurisdiction forever," and article 98 provided that such of these laws as were not altered or repealed by the General Court within three years, "shall

stand so ratified." Prior to the adoption or promulgation of these laws by the General Court, they were submitted to the magistrates and elders and freemen in the several towns and approved by them, and published to all the people.⁴

The idea of a body of fundamental laws, "in resemblance to a Magna Charta," originated in Massachusetts as early as 1635. In that year it was decided to appoint a committee or board to frame such a body of laws.⁵ The matter was considered by several General Courts and referred to some of the magistrates and elders, but no progress was made in framing such laws until Mr. Cotton and Reverend Nathaniel Ward were appointed. Each of these gentlemen prepared a draft and presented it to the General Court in 1639, and the latter body committed both drafts to the governor and deputy governor to consider, and to revise for the next General Court.⁶ The draft prepared by Mr. Ward was adopted, without substantial change, in 1641.⁷

While the Body of Liberties was under consideration in Massachusetts, the first planters of Connecticut, consisting of the freemen of the three towns of Windsor, Hartford and Wethersfield, assembled at Hartford and drew up and adopted the first written constitution of representative government in history. They called this constitution "The Fundamental Orders of Connecticut," and it was adopted in 1639. It contained eleven orders or laws of a fundamental nature; provided for the election of officers, both executive and legislative, and prescribed rules and modes of government.⁸

¹ Swift's System of Laws, p. 62.

² Savage's Winthrop, I, 388-389; II, 66.

³ Whitmore, Colonial Laws, 8, 9.

⁴ Savage's Winthrop, I, 191.

⁵ Savage's Winthrop, I, 388.

⁶ Savage's Winthrop, II, 66.

⁷ Baldwin's "Three Constitutions of Conn." 180-182;

Conn. Col. Records, I, 39.

¹ American Eloquence, vol. I, p. 80, edited by Frank Moore (D. Appleton & Co. 1859).

² Preface to 1 D. Chipman's (Vt.) Reports, 25;

³ "The Three Constitutions of Connecticut," by S. E. Baldwin, in Papers of the New Haven Colony Historical Society, vol. V, page 292.

II. EARLY CASES AND OPINIONS UPON THIS POWER.

James Otis of Massachusetts seems entitled to the credit of being the first man in New England to bring the doctrine, that the courts

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should possess the power to disregard unconstitutional statutes, before the people, in such a manner as to render it popular among the Colonists. In his famous argument in 1761 against the validity of Writs of Assistance, in *Paxton's Case*, Quincy 51, 56 note, he boldly maintained that an Act of Parliament against the Constitution is void, and that its invalidity may be declared and acted upon by the courts of justice: "and thus foreshadowed the principle of American Constitutional law, that it is the duty of the judiciary to declare unconstitutional statutes void.¹ These writs of assistance were granted to the officers of the customs, and authorized them to enter ships, warehouses and even dwelling houses in the search for contraband and uncustomed goods. This authority had been greatly abused by the customs officers of the Crown, and had rendered the Acts of Parliament under which they were issued very unpopular in the Colonies. "The people grew uneasy," Hutchinson tells us, "under the exercise of this assumed authority," and resisted and sued the officers.² Otis had been Advocate General until shortly before his argument in *Paxton's case*, and resigned his office in order to avoid the unpatriotic duty of argu-

ing in favor of these writs.³ Although the court decided against the proposition advanced by Otis and issued the writ in *Paxton's case*, his argument appealed strongly to the popular feeling, and aroused great enthusiasm in Massachusetts, and paved the way for the subsequent adoption of his view by the American people. This view was repeatedly asserted by Otis on other occasions, and in the course of the disputes with England, it became a favorite argument with the Colonists in resisting the Crown.⁴

Referring to *Paxton's case*, Thomas Hutchinson, who sat as chief justice in this case, and was the last royal governor of Massachusetts Bay, says in his history (pages 94 and 95): "The people were taught that innovations, under pretense of law, were now confirmed by judgment of Court incompatible with English liberties, and that the authority of courts of admiralty, and the powers of custom-house officers, always deemed grievous because unconstitutional, were now established by judges devoted to the prerogative."⁵

Until after the adoption of the Constitution of the United States in 1789, the progress of this doctrine in Massachusetts and throughout the country was slow and un-**Massachusetts.** certain. Mr. J. B. Cutting in a letter to Thomas Jefferson, dated July 11, 1788, says that a case had been decided in Massachusetts, holding a statute unconstitutional.⁶ He does not give the names of the parties, however, or any other particulars, and no record of such a decision has yet come to light. It seems safe to affirm

¹ Note on Writs of Assistance, Appendix 1 to Quincy's Report, p. 521, supposed to have been prepared by Mr. Justice Horace Gray of the U. S. Supreme Court.

² Hutchinson's Hist. Mass., 92.

³ Washburn's Jud. Hist. Mass., 186.

⁴ Jeffries v. Sewall, John Adams's Works, vol. 2, p. 129;

Rights of the British Colonies, pp. 41, 61, 62, 71-73, 109, 110.

⁵ Extracts from this celebrated speech by Otis are given in the Diary of John Adams, App. 524, 524; Minot, vol. II, pp. 91-99; Barry's Hist. Mass. (2d ed.), 264-267.

⁶ Bancroft, Hist. Const. U. S., pp. 473-473.

that no Massachusetts decision to that effect was rendered before the Federal Constitution became the law of the land.

It was not until 1804 that this power seems to have been asserted by the courts of Massachusetts, and then only in a very mild form. In *Stoughton v. Baker*, 4 Mass., 522 at 529, Chief Justice Parsons said: "The legislature may make all laws not repugnant to the Constitution: and we do not know that this law is repugnant to it." In 1814, an act of the Massachusetts legislature, suspending the operation of a general law in favor of an individual, was held unconstitutional by the court in the case of *Holden v. James*, 11 Mass., 396.

In its early stages the doctrine encountered vigorous opposition, both from the legislative and from the executive departments and also from the people. In Vermont, until the adop-

Vermont. tion of the Constitution of the United States, or later, it was the general opinion that the legislature was supreme; that the courts had no power to declare a legislative act unconstitutional; and the contrary view was considered "anti-republican," as Judge Chipman expresses it.¹

Dupy v. Wickwire, 1 D. Chipman (Vt.), 237, decided in 1814, is believed to be the first case in this State declaring a statute unconstitutional. It was an action of debt to recover a penalty of \$300 under a statute for the support of the poor. The ground of action was that the defendant, contrary to the terms of the statute, had transported into the town of Readsborough one Jacob Morse, a poor person, not having a legal settlement in said town, with the intent to make the town chargeable with

his support. The plaintiff sued on behalf of himself and of the town of Readsborough. At the trial in the County Court the plaintiff offered the deposition of the pauper in evidence, but it was excluded because the caption omitted the *qui tau*. The plaintiff then procured an act of the legislature, directing the deposition to be read in any future trial of the action, notwithstanding the irregularity in the caption. The court held that the deposition was competent evidence on general principles, but not by virtue of the statute. In an opinion "by the court" it is stated: "The act is most clearly unconstitutional and void. It is an attempt of the legislature to make a judicial decision in a particular case; but the Constitution of this State prohibits the legislature from the exercise of any judicial powers. The act is also retrospective in its operation, is rather in the nature of a legislative sentence, order, or decree, than of a law." Page 238.

In Connecticut the early opinion was strongly opposed to this doctrine. "English precedents," Judge Simeon E. Baldwin informs us, "had made our ancestors for Connecticut, milliar with the omnipotence of Parliament, and some of our Colonial assemblies were deemed to have powers hardly less great, so long as they did not contravene the laws of the mother country or the allegiance due to the British Crown."² The Charter of 1662, which was generally regarded and accepted as the Constitution or fundamental law of the State until 1818, invested the legislature virtually with supreme power in all departments of government, and until 1807 the upper house was also the Supreme Court of the

¹ 1 D. Chipman's Vt. Reports, Preface, 22-26. Const. Hist. Vermont, by J. W. Rowell, 4 New Eng. States, p. 1397. *

² "The Three Constitutions of Connecticut," a paper read before the New Haven Colony Historical Society (1889 and 1891), vol. V. of the Society Papers, page 202.

State, to which all appeals from other courts were taken.¹ It is true that *Synsaury's Case*, Kirby's Reports, 447, 452, decided in 1781 by the Supreme Court of Errors, contained the germ of the doctrine that the courts may declare unconstitutional statutes void and inoperative; but this case did not squarely decide the question. As late as 1795 the prevailing view was that the judiciary did not possess this power. In that year, Zephaniah Swift, who was then a distinguished lawyer and afterwards chief justice of Connecticut, published his book on "*The System of Laws in Connecticut*," in which he maintained that this doctrine was untenable and unfounded in truth and reason, although he conceded that it was "popular and prevalent."

Judge Swift's arguments are vigorous and concise, and are well worthy of serious consideration, even now. He says in his work just mentioned:

"The legislature must be considered as the supreme branch of the government. Previously to their passing an act, they must consider and determine whether it be compatible with the constitution. Being the supreme power, and bound to judge with respect to the question in the first instance, their decision must be final and conclusive. It involves the most manifest absurdity, and is degrading to the legislature, to admit the idea, that the judiciary may rejudge the same question which they have decided; and if they are of a different opinion, reverse the law, and pronounce it to be a nullity. It is an elevation of the judiciary over the heads of the legislature: it vests them with supreme power, and enables them to repeal all the laws, and defeat all the meas-

ures of the government. Whenever a law is passed by the legislature, the first business of the courts will be to decide whether it be constitutional and valid. The lowest courts must permit the question to be seriously and deliberately agitated before them, respecting the validity of the law, and then they must solemnly decide, whether an act passed by the supreme legislature be constitutional and obligatory on the people. Indeed the necessary consequence is that no law passed by the legislature, can be deemed binding, till it has received the sanction of the supreme judiciary, and has been declared to be constitutional. The lower courts may decide differently, and the obligation to obey a law may be uncertain, till some individual brings the question before the supreme tribunal for ultimate decision. Where this tribunal is composed of one branch of the legislature, perhaps no danger could arise, because they must have previously in their legislative capacity, decided the law to be constitutional; but where the judiciary are independent of the people and the legislature, and hold their offices by an appointment of the supreme executive, it is a total prostration of the government, to vest them with a power of deciding that legislative acts are null. The legislature will lose all regard and veneration in the eyes of the people, when the lowest tribunals of judicature are permitted to exercise the power of questioning the validity, and deciding on the constitutionality of its acts—a principle so dangerous to the rights of the people, and so derogatory to the dignity of the legislature, cannot be founded in truth and reason."²

In New Hampshire, an act of the General

¹ Some Paper by Judge Baldwin, vol. V, pp. 208, 209; *Calder v. Bull*, 3 Dallas, 306, 305; Butler, J. in *Opinion of the Judges*, 30 Conn. 391 at 396.

² *Swift's System of the Laws of Connecticut*, vol. 1, pp. 52, 53.

Court granting a new trial to the unsuccessful

party in the case *Gilman v. New Hampshire*. McCleary was declared unconstitutional by the Superior Court in 1791. The legislature, however, did not acquiesce in the exercise of this power by the court; but on the contrary, passed at least four other statutes between 1791 and 1817 granting new trials in actions then pending in the courts; all of which statutes were also pronounced unconstitutional, and new trials refused by the highest court of New Hampshire.¹ In 1818 this question was finally settled in favor of the court's power in a learned opinion delivered by Judge Woodbury in *Merrill v. Sherburne*, 1 N. H., 199.

In Rhode Island the judges of the Superior Court displayed great courage and independ-

ence in defying the legislature in the important case of *Trevett v. Weeden*, decided in September, 1786. This was the first case in New England, and the second, or possibly the third, case in the United States, in which a statute was disregarded by a court on the express ground that it was unconstitutional. The Superior Court was the highest court of the State, and the judges who participated in this famous judgment were Chief Justice Munford and Associate Justices Hazard, Tillinghast, Davol and Howell. The defendant, John Weeden, was a butcher in Newport, who, on September 13, 1786, refused to accept certain paper money issued by the State under an act passed by the Assembly in May, 1786, which made the bills a legal tender in payment of debts at par with coin. The plaintiff, John

Trevett, had purchased meat of Weeden in the open market and had tendered the bills in payment. The action was brought under a statute passed in August, 1786, which authorized the recovery of a sum of not less than six pounds nor more than thirty pounds for a refusal to accept the bills as payment. One-half of the penalty recovered went to the complainant and the other half to the State. The statute did not empower the court to empanel a jury, but on the contrary declared that the trial might be without a jury. The action was brought to trial before the five judges on September 25, 1786, and was tried on a plea to the jurisdiction, assigning among other grounds for the dismissal of the suit, that "the court is not authorized or empowered by said act to empanel a jury to try the facts charged in the information, and so the same is unconstitutional and void." James M. Varnum was counsel for the defendant and made a powerful argument in support of the plea to the jurisdiction of the court. The following day, September 26, 1786, the court ordered judgment for the defendant in these words: "The said complaint does not come under the cognizance of the justices here present, and that the same be and is hereby dismissed."

No written opinions were filed, but all the judges except the chief justice delivered oral opinions, stating the reasons for their judgment. Judges Howell, Davol and Tillinghast held the statute unconstitutional and therefore incapable of conferring jurisdiction upon the court, chiefly upon the ground that a jury trial was not allowed. Judge Hazard voted in favor of dismissing the action, and Chief

¹ *Merrill v. Sherburne*, 1 N. H., 199 (1818), citing on page 216 the four cases of (1) *Gilman v. McCleary*, Sept. 1791; (2) *Chickering v. Clark*, no date; (3) *Butterfield v. Morgan*, May, 1797; (4) *Jenness v. Seavey*, Feb. 1799. Judge Woodbury in delivering the

opinion in the court in *Merrill v. Sherburne* states on page 216 that the decisions had been contradictory. See also *Life of Plumer*, p. 170. "Development of the Courts of N. H.," by A. S. Batcheller, in 4 New England States, p. 2305.

Justice Mumford announced the judgment without stating his reasons.

This decision astonished the legislature and created great excitement in the State. As soon as the General Assembly met in October, 1786, it ordered the judges to appear and give their reasons for such unheard of conduct. The preamble to the resolutions states that a judgment of a court declaring an Act of the Supreme Legislature to be unconstitutional and absolutely void, "is unprecedented in this State, and may tend directly to abolish the legislative authority thereof." Justices Hazard, Tillinghast and Howell appeared before the legislature, and argued in defence of the judgment at great length — Judge Howell occupying upward of six hours. The Assembly voted that it was not satisfied with the reasons given by the judges, and it was moved that they be dismissed from office. This motion was not passed; but at the following annual election of the judges by the Assembly, all the judges except Chief Justice Mumford failed to be re-elected. That the decision made considerable impression in the legislature, however, is evidenced by the fact that the statute under which the action was brought was repealed in December, 1786.¹

In Maine, the first decision declaring a statute unconstitutional seems to have been the case of Proprietors of the Kennebec Purchase

Maine. *v. Lubree*, 2 Greenleaf, 275, decided in 1823, relating to the statute of 1821, chapter 62, section 6. In 1825 another statute was held unconstitutional in the case of *Lewis v. Weld*, 3 Greenleaf, 326.

Commonwealth v. Caton, 1 Call (Va.), 5.

¹ The chief sources of information upon Trevelt v. Weeden are a pamphlet by James W. Varnum, entitled "The Case of Trevelt v. Weeden," Providence, 1787; *Judicial History of Rhode Island*, by Thomas Durfee

was decided by the Court of Appeals of Virginia in November, 1782. With the possible exception of the New Jersey case of

Holmes v. Walton, this case of *Caton* seems to be the first case in which the constitutional validity of a statute was questioned by the judges. The case involved the treason law of 1776, under which Caton and Hopkins and Lamb had been convicted of treason. The House of Delegates on June 18, 1782, granted them a pardon by a resolution, and sent it to the Senate for concurrence; but the Senate refused to concur. The prisoners pleaded this pardon in defence, and the question was, had the House of Delegates, without the concurrence of the Senate, the power to grant a pardon. The Court of Appeals, which upon this occasion consisted of Pendleton, Wythe and Blair, judges of the High Court of Chancery; Carrington, Dandridge, Lyons and Mercer, judges of the General Court; and Cary, one of the judges of the Court of Admiralty, held unanimously that the House of Delegates alone had no such power, and that the pardon was invalid. The court also held that the treason law of 1776, which took from the executive the power of pardoning in cases of treason and conferred it upon the General Assembly, was constitutional. No statute was held unconstitutional.

The only opinions which are reported are those of President Pendleton and Judge Wythe, though the learned reporter states on page 20 that "Chancellor Blair and the rest of the judges were of the opinion that the Court had

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in 4 New England States, pp. 282-286; McMaster's *History of People of U. S.*, vol. 1, pp. 387-389; Arnold's *Hist. R. L.*, vol. 11, ch. 41; 10 R. I. Colonial Records, pp. 219, 220; 2 Chandler's *Crim. Trials*, 269.

power to declare any resolution or act of the legislature or of either branch of it, to be unconstitutional and void"; and in a note written many years after the decision, probably in 1827, the reporter states: "It is said that this is the first case in the United States where the question relative to the nullity of an unconstitutional law was ever discussed before a judicial tribunal; and the firmness of the judges (particularly of Mr. Wythe) was highly honorable to them, and will always be applauded, as having incidentally fixed a precedent, where, on a general practice, which the people of this country think essential to their rights and liberty, has been established." Pages 20, 21.

Judge Wythe, after stating that in his opinion the court had the power to decide that the House of Delegates had no authority, without the concurrence of the Senate, to grant this pardon, adds on page 8: "Nay more, if the whole legislature, an event to be deprecated, should attempt to overlap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat in this tribunal, and pointing to the constitution, will say to them, here is the limit of your authority; and hither shall you go, but no farther."

President Pendleton, however, expressed grave doubts upon the question. He agreed that the Constitution "must be considered as a rule obligatory upon every department," upon the legislative as well as upon the executive and judicial departments, and then remarks: "But how far this Court, in which the judiciary powers may in some sort be said to be concentrated, shall have power to declare the nullity of a law passed in its forms by the legislative power, without exercising the power of that branch, contrary to the plain terms of that

Constitution [which expressly declared that each department should be kept separate and distinct from the others], is indeed a deep, important and I will add a tremendous question, the decision of which might involve consequences to which gentlemen may not have extended their ideas." Page 17.

In 1793 the General Court of Virginia, for the first time in the judicial history of the State, declared a statute unconstitutional, in the case of *Kemper v. Hawkins*, 1 Va. Cases, 60.

Bayard v. Singleton, 1 Martin (N. C.), 48, was twice argued before the Superior Court of North Carolina, at the May term of 1786 and at the May term of 1787, and North Carolina. was finally decided at the November term of 1787, by Judges Ashe, Spencer and Williams. It was an action of ejectment to recover land in the town of Newbern, North Carolina, and involved the validity of the statute of 1785 of North Carolina, relating to confiscated property. This statute provided that all suits brought by persons whose property had been confiscated by the State, should be dismissed by the court, if the defendant filed an affidavit that he held the property in dispute under a sale from a commissioner of forfeited estates. The defendant in this case filed an affidavit to this effect, and moved the court to dismiss the action. The court held this motion under consideration for about a year, and at the May term of 1787, "the Court recommended to the parties to consent to a fair decision of the property in question by a jury, according to the common law of the land, and pointed out to the defendant the uncertainty that would always attend his title, if this case should be dismissed without a trial." (Report, p. 41 of the second edition

of Wm. H. Battle, 1843.) The defendant, however, insisted upon his motion to disqualify, and the Court with "great reluctance" overruled his motion, and ordered the action to stand for trial by a jury. The Court held that the statute was unconstitutional for the reason that it did not allow the citizen a trial by jury, or in fact any trial, and stated that "if the legislature could take away this right and require him to stand condemned in his property without a trial, it might with as much authority require his life to be taken away without a trial by jury, and that he should stand condemned to die, without the formality of any trial at all." (Page 45 of second edition, 1843.) The case was subsequently tried by a jury, who found a verdict for the defendant, upon which twenty-seven other similar cases were voluntarily nonsuited by the plaintiffs.

Holmes v. Walton in the Supreme Court of New Jersey, was decided at an early date, apparently in September, 1780, as President

New Jersey. Scott of Rutgers College maintains.¹ It related to the "seizure laws," and the legislature had enacted that the trial for such offences should be by a jury of six men, instead of twelve. "Upon solemn argument," as Judge Kirkpatrick informs us in *State v. Parkhurst*, 4 Halst. (N. J.), 427, 444, the act "was adjudged to be unconstitutional, and in that case inoperative. And upon this decision the act, or at least that part of it which relates to the six men jury, was repealed; and a constitutional jury of twelve men substituted in its place." The judges who sat in this case were Chief Justice Brearley and Justices Smith and Symmes.

Taylor v. Reading, cited by Judge Kirkpatrick in *State v. Parkhurst*, 4 Halst. (N. J.), 427 at 444, was decided in 1795 or 1796 by the

¹ Am. Hist. Assoc. Papers, II. 46 (1886).

Court of Errors of New Jersey. In this case, a New Jersey statute passed in March, 1795, providing that certain payments in continental money should be credited as specie, was held to be an *ex post facto* law and unconstitutional, and was therefore disregarded by the court in deciding the case against Reading.

In January, 1797, the legislature, however, passed an act for the relief of Reading in another way.²

Bowman v. Middleton, 1 Bay (S. C.), 252, was decided by Judges Grincke and Bay in the Court of Common Pleas at the May term, 1792. The case involved, or was supposed to involve, the validity of an act of assembly passed in 1712, which confirmed the title of certain persons to certain land which, it was claimed, had been previously granted to other persons. There were other points in the case which do not appear in the report; but upon this point the court held that the act of 1712 was void, "as it was against common right, as well as magna charta, to take away the freehold of one man and vest it in another, and that too, to the prejudice of third persons, without any compensation, or even a trial by the jury of the country, to determine the rights in question." Page 254.

In *Hays v. Harley*, 1 Const. Rep. (S. C.), 267, it was decided by the Constitutional Court of South Carolina in 1817 that the statute of 1812 limiting the term of office of Ordinaries or Judges of Probate, to four years was unconstitutional, because the Constitution provides that judges shall hold their offices during good behavior, and can be removed only by impeachment.

Alexander Hamilton was among the first to state the doctrine in clear and forcible terms, and very little has since been added to the

² *State v. Parkhurst*, 4 Halst. (N. J.), 427, 444.

strength of his argument. In No. 78 of the *Federalist*, first published on May 28, 1788,

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Hamilton says: "Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American Constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

"If it be said that the legislative body are themselves the constitutional judges of their own powers and that the construction they put upon them is conclusive upon the other departments, it may be answered that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the Representatives of the People to substitute their will to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the People and the legislature,

in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or in other words, the Constitution ought to be preferred to the statute; the intention of the People to the intention of their agents.

"Nor does this conclusion by any means suppose a superiority of the Judicial to the Legislative power. It only supposes that the power of the People is superior to both; and that when the will of the Legislature, declared in its statutes, stands in opposition to that of the People, declared in the Constitution, the judges ought to be governed by the latter rather than by the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental."

In *Calder v. Bull*, 3 Dallas, 386, decided in 1798, the judges of the Supreme Court assumed that they possessed the power to disregard a State statute when repugnant to the Federal Constitution, but held that the law of Connecticut involved in that case

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was not repugnant to that Constitution, and therefore affirmed the State judgment. The highest Court of Connecticut having held that the statute in question did not contravene the State Constitution, the Supreme Court of the United States was of the opinion that it

was bound to follow this construction of the State Constitution by the State Court.

In 1803 it was decided for the first time by the Supreme Court that an Act of Congress might be disregarded by the courts, on the ground that it was repugnant to the Constitution of the United States. Chief Justice Marshall who delivered the judgment of the Court upon this question in the case of *Marbury v. Madison*, 1 Cranch, 137, discussed this power of the judiciary in an opinion which has received the highest commendation, and is generally recognized as settling the doctrine beyond further controversy. Although the chief justice adduced no new arguments in support of this power, he restated them in such clear, concise and forcible terms as to carry conviction. The point decided was that Congress had not the power to confer any original jurisdiction upon the Supreme Court, as such jurisdiction was prescribed and limited by the Constitution, and that the thirteenth section of the judiciary act of 1789, purporting to authorize the Court to issue writs of mandamus, was therefore inoperative and void.

In *Cooper v. Telfair*, 4 Dallas, 14, decided by the Supreme Court of the United States in 1800, Mr. Justice Chase said on page 19: "Although it is alleged that all acts of the legislature, in direct opposition to the prohibitions of the Constitution, would be void, yet it *still remains a question where the power resides to declare it void.*" In this case it was decided that the Georgia statute of 1782, which banished the plaintiff and others and confiscated their property for high treason, was not repugnant to the Constitution of Georgia.

Perhaps the strongest argument against the power of the courts to disregard unconstitutional

statutes is that this power more properly rests with the People in their sovereign capacity, who can repeal the unconstitutional statute by electing new representatives to the legislature. This argument is well expressed by Judge Gibson in his dissenting opinion in *Eakin v. Raub*, 12 Sar. & R. (Pa.), 330 at 355.

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There are, however, several answers to this argument. (1st) Even when the Constitution does not contain an express grant of the power to the judiciary, a repeal of the statute would not afford adequate relief, because of the lapse of time which must occur before the repeal can be effected. (2d) There are many constitutional rights which cannot be discussed or decided in elections to the legislature.¹ (3d) An unconstitutional law of one State may injuriously affect the rights of citizens of other States, who cannot vote at the elections in the former State. If, therefore, the law be approved by the voters of the former State, the citizens of the latter could not obtain redress through the legislature. (4th) The preceding reason (3d), applies not only to violations of the State Constitutions, but with especial force to State statutes in violation of the Federal Constitution. For instance, if a State law impairs the obligation of a contract held by a non-resident of the State, in contravention of the Federal Constitution, the non-resident, not being a voter in such State, has no means of redress, except through the courts, so long as the voters of that State favor the law. (5th) There are some laws which are unconstitutional as applied to crimes committed or contracts made, before the passage of the statute, but are not unconstitutional as applied to subsequent crimes or contracts. Thus a State law

¹ *Whittington v. Falk*, 1 Harris & Johns (Md.), 238, 243; *Charlton's* (Ga.) Reports, 176.

Eakin v. Raub, 12 Sar. & R. (Pa.), 330, 380.

may be unconstitutional as an *ex post facto* law as applied to anterior crimes, and yet valid as applied to posterior crimes. So, likewise the same statute may be unconstitutional as impairing the obligation of contracts as applied to prior contracts, and yet be valid as applied to subsequent contracts. In such cases, it is obvious that a repeal of the statute, or even a legislative limitation of it to subsequent crimes or contracts, would have to come very quickly in order to preserve the constitutional rights of the citizen. Again, the statute might be beneficial as to the future and require no repeal. (6th) A State statute may be unconstitutional as depriving a person of his liberty or property "without due process of law" as applied to contracts made in other States, but may be valid as applied to contracts made in the State passing such statute.¹

In a letter to the legislature of Pennsylvania, Gouverneur Morris wrote in 1785: "In New Jersey the judges pronounced a law unconstitutional and void. Surely no good citizen can wish to see this point decided in the tribunals of Pennsylvania. Such power in judges is dangerous, but unless it somewhere exists, the time employed in framing a bill of rights and form of government was merely thrown away."²

III. CAUSES WHICH LED TO THE GENERAL ADOPTION OF THIS POWER.

The chief causes which led to the general adoption of the view that the courts should possess the power to disregard unconstitutional statutes seem to be (1st) the necessity felt at the time of the adoption of the Constitution of the United States of conferring upon some

tribunal the power to settle in a peaceful manner cases involving conflicts between the States on the one hand and the United States on the other hand; (2d) the establishment of the judiciary as an independent and co-ordinate department of the government, especially the Federal judiciary independent of the States; (3d) the need of giving some tribunal the power to protect the fundamental rights of the individual guaranteed by the Constitution; and (4th) the spread of the idea or belief that a constitution is a higher law than a statute.

That the exigencies of our dual form of government was one of the principal causes for the extension of this doctrine seems clear.

By the Constitution of the United States the powers of sovereignty were apportioned between the States and the United States. Certain powers of legislation were expressly conferred upon Congress and expressly denied to the State legislatures. Congress, for instance, was given power to coin money and to regulate interstate and foreign commerce, while the State legislatures were prohibited from issuing bills of credit, and from passing any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts. If the States committed any of these prohibited acts, how was the authority of Congress to be enforced or the constitutional right of the individual to be protected? Should the general government be given a direct negative or veto upon State legislation? This question was much discussed in the Constitutional Convention of 1787, and it was finally decided that the courts, especially the Federal Courts, were the best tribunals to settle these delicate ques-

Section 30. Four Principal Causes.

¹ *Alfgeyer v. Louisiana*, 165 U. S. 578; *Hooper v. California*, 155 U. S. 648.

² *Spark's Life of Morris*, Vol. III, p. 47.

tions as they arose; to preserve the constitutional distribution of sovereign powers between the States and the United States, and to protect the constitutional rights of the individual.

Alexander Hamilton was a member of the Constitutional Convention of 1787, and in Number 80 of the *Federalist*, published in 1788, he says upon this subject:

"There ought always to be a constitutional method of giving efficacy to constitutional provisions. What for instance would avail restrictions on the authority of the State legislatures, without some constitutional mode of enforcing the observance of them? The States by the plan of the Constitution are prohibited from doing a variety of things; some of which are incompatible with the interests of the Union, and others with the principles of good government. The imposition of duties on imported articles, and the emission of paper money, are specimens of each kind. No man of sense will believe that such prohibitions would be scrupulously regarded, without some effectual power in the government to restrain or correct the infraction of them. This power must either be a direct negative on the State laws, or an authority in the Federal Courts to overrule such as might be in manifest contravention of the Articles of Union. There is no third course that I can imagine. The latter appears to have been thought by the Convention preferable to the former, and I presume, will be most agreeable to the States."

Marshall declared in the Virginia Convention of 1788 that "If they [Congress] were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not

consider such a law as coming under their jurisdiction. They would declare it void."¹

In 1803, as chief justice of the United States, Marshall held an Act of Congress unconstitutional which attempted to confer jurisdiction upon the Supreme Court, and refused to take jurisdiction under the Act, in the leading case of *Marbury v. Madison*, 1 Cranch, 137.

Patrick Henry also expresses the opinion that the courts possessed this power under the Federal Constitution.²

Prior to the adoption of the Constitution of the United States there was no Constitution which in clear terms conferred upon the judicial department the power to disregard acts of the legislative department. The Articles of Confederation contained no such provision; and the State Constitutions were equally lacking in this particular. The second clause of the sixth article of the United States Constitution, however, declares that "This Constitution . . . shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the laws or constitution of any State to the contrary notwithstanding." The phraseology of this clause, as well as the debates in the Federal Convention and in the State Conventions, and the articles in the *Federalist* show clearly that the intention was to authorize the Courts to disregard State laws when they were contrary to the Federal Constitution. The chief object was to restrict the legislative power of the States.³ Instead of giving the Federal government a direct negative or veto upon State legislation, as was proposed in the Federal Convention, a Federal Supreme Court was established with power to refuse to enforce a State law when in the Court's opinion it was contrary to the Fed-

¹ 3 Elliot's Debates (2d ed. 1856), p. 553.

² 3 Elliot's Debates (2d ed.), p. 326.

³ *Calder v. Bull*, 3 Dallas, 396.

eral Constitution. In this way the danger of conflicts of jurisdiction between the general government and the State governments was greatly lessened. A proposed State law was not assailed or questioned by the general government before its passage, when local feeling might be strong and the State legislature in session. Its validity might not be denied in a judicial proceeding until years after its passage, and if the statute were declared unconstitutional, it would not seem to be an attack upon the State legislature, but a vindication of the constitutional rights of an individual senator then in court.

This clause was an express grant of power to the judges of the State Courts, as well as of the Federal Courts, to disregard State statutes when in conflict with the Federal Constitution. It was upon this clause that Judge Gibson, afterwards chief justice of Pennsylvania, based his opinion in 1825 that the judiciary was not bound to enforce a statute which the Court considered contrary to the Federal Constitu-

tion,¹ because that instrument contained an express grant of power to the Courts to disregard unconstitutional laws. With respect to the State Constitutions, however, which contained no such express grant of power, Judge Gibson held that the Courts were bound to give effect to a statute, though they considered it unconstitutional; and that the remedy rested with the people "to correct abuses in legislation, by instructing their representatives to repeal the obnoxious act."² Twenty years later, however, in 1845, in view of the fact that the Pennsylvania Constitution of 1838 was silent upon the question of the exercise of this power by the Courts, and had thereby "sanctioned the pretensions of the Courts to deal freely with the acts of the legislature, and from experience of the necessity of the case," Judge Gibson modified his former view of 1825, and agreed that the courts had the power to disregard the statutes which were contrary to the State Constitution, as well as those contrary to the Federal Constitution.³

¹ *Eakin v. Raub*, 12 S. & R. (Pa.) 330 at 336, 357, per Gibson, J., dissenting (1825).

² *Eakin v. Raub*, 12 S. & R. (Pa.) 330 at 355, per Gibson, J., dissenting (1825). Judge Gibson's opinion in this case contains a very able discussion of this question, extracts from which are here reproduced.

"It seems to me there is a plain difference, heretofore unnoticed, between acts that are repugnant to the Constitution of the particular State and acts that are repugnant to the Constitution of the United States; my opinion being that the judiciary is bound to execute the former, but not the latter. . . . I am aware, that a right to declare all unconstitutional acts void, without distinction as to either Constitution, is generally held as a professional dogma; but, I apprehend, rather as a matter of faith than of reason." P. 343.

"Power rests with the people, not with the Courts, 'to correct abuses in legislation, by instructing their representatives to repeal the obnoxious act.' P. 355.

"But in regard to an act of assembly, which is found to be in collision with the Constitution, laws, or treaties of the United States, I take the duty of the judiciary to be exactly the reverse. By becom-

ing parties to the Federal Constitution, the States have agreed to several limitations of their individual sovereignty, to enforce which, it was thought absolutely necessary to prevent them from giving effect to laws in violation of those limitations, through the instrumentality of their own judges. Accordingly, it is declared in the fifth article and second section of the Federal Constitution, that 'This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the *supreme* law of the land, and the *judges* in every State shall be bound thereby: anything in the laws or Constitution of any State to the contrary notwithstanding.'

"This is an express grant of a political power, and it is conclusive to show that no law of inferior obligation, as every State law must necessarily be, can be executed at the expense of the Constitution, laws or treaties of the United States." P. 356.

"This, therefore, is an express grant of the power, and would be sufficient for the purposes of the argument; but it is not all." P. 357.

³ *Morris v. Clymer*, 2 Pa. St., 281 (1845).

It was not until after the Constitutional Convention of 1787 that it was generally recognized that the only effectual means of protecting the rights of the individual from unconstitutional legislation was by allowing the Courts to disregard such legislation in passing upon the rights of litigants. The debates in the Federal Convention of 1787 and the arguments of Alexander Hamilton, Madison and others in the *Federalist* in 1787 and 1788, and of Marshall and Patrick Henry in the Virginia Convention, tended strongly to establish the belief in the minds of the people that this power should be exercised by the Courts, and that the legislature should not be the final judge of the constitutional rights of the private citizen. As Hamilton stated in No. 80 of the *Federalist*, one object in establishing Federal Courts was to create a tribunal with power to overrule such State laws as might be in manifest contravention of the Constitution.

When the power of the Courts to disregard statutes which were repugnant to the Constitution of the United States was generally recognized, it became an easy step in the progress of the doctrine for the Courts to exercise a like power with respect to State statutes which were repugnant to the State Constitution. The mere acquiescence of the people in the exercise of the power in the former case was a strong argument in favor of the existence of the power in the latter case. In the meantime, too, many of the States had accepted the doctrine of the supremacy of the Constitution, and had established an independent judiciary as a co-ordinate department of the government, and had expressly prohibited the legislature from exercising judicial functions.

These views are also supported by the opin-

ion of Judge Daniel Chipman of Vermont. In the Preface to the first volume of his *Vermont Reports* written in the year 1824, after mentioning some legislative encroachments upon the power of the judiciary, among which were the setting aside of judgments rendered by the courts, Judge Chipman states on page 24: "This was in the year 1786 before the adoption of the Constitution of the United States, and *before it was ascertained* that in a Republican Government, to secure the people in the full enjoyment of their civil rights it is indispensable that the power of the legislature be limited, and that practically they cannot be limited but by an independent judiciary, without which, declarations of rights and limitations of power become a dead letter." On pages 25, 26 and 27 of this Preface, Judge Chipman adds: "And long after the period to which we have alluded, the doctrine that the Constitution is the supreme law of the land, and that the judiciary have authority to set aside and pronounce void all acts of the legislature repugnant thereto was considered anti-republican. If it be so, it is because it maintains the authority of the master over the servant and the authority of the people over the legislature. It has become a self-evident proposition that the people have a right to establish such form of government as they please; yet it will be but a mere form, unless the power of the legislature be limited; and no other method has been devised, and probably none other can be devised, to render such limitation effectual than that of establishing an independent judiciary. Experience has shown that the representatives of the people in the legislature, with unlimited powers, form a body dangerous to the liberties of the people. . . . But the increasing light of science and experience, since the Constitution of the United States was adopted,

have rendered the principle familiar that a constitution of government established by the people, is the supreme law of the land.¹

It is true that prior to the Constitutional Convention of 1787 two or three State Courts had exercised this power in very extreme cases; but the prevailing view prior to 1787 was contrary to the existence of this power in the judiciary, and nearly every exercise of the power met with strong opposition, or vigorous protest. (See Sections 37, 38).

In *Trevett v. Weeden*, decided by the Superior Court of Rhode Island in September, 1786, it was held that a statute which made no provision for trial by jury of a *qui tam* action to recover a penalty for refusal to accept paper money in payment of goods sold, was contrary to the Charter of 1663, which was then serving as the Constitution of the State. Shortly afterwards the judges who had taken part in this decision were summoned to appear before the legislature to explain their conduct, and narrowly escaped impeachment; at the following annual election by the legislature, all the judges failed of re-election, except the chief justice, and he had not expressed any opinion upon the constitutionality of the statute, but had merely announced the judgment of the court, dismissing the action.

In *Rutgers v. Waddington*, decided by the Mayor's Court of New York in 1784, it was held that a statute of New York which provided that military orders from British authorities for the occupation of houses during the Revolution should be no defence to an action by the owner against the occupant, was contrary to the treaty of peace between Great Britain and

the United States. But Alexander Hamilton, who was counsel for the successful British subject who was defendant in this action, stated subsequently that the action was compromised under his advice, for the reason that the general opinion of the bar was that the Supreme Court was of the contrary opinion, and that he feared a reversal of the judgment of the Mayor's Court.² The Whigs of the State called a public meeting to protest against this decision of the Mayor's Court, and issued a stirring address to the people of the State, in which they declared that "such powers in courts would be destructive of liberty, and remove all security of property,"³ and that a perseverance in such an odious principle would leave nothing to the legislature but a name, and make a legislative session nothing but an expense.⁴

As late as 1807 and 1808 Judges Tool and Pease of the Supreme Court of Ohio were impeached by the Ohio legislature for holding a statute unconstitutional, but after a trial lasting several days, were acquitted.⁵

Notwithstanding the few early cases to the contrary, it seems safe to affirm that this power in the judiciary would not have been generally adopted in America if the people had not formed a National government and united under the Constitution of the United States, which created a Federal judiciary independent of the States with power to disregard State statutes when repugnant to the Constitution.

Professor James B. Thayer, of the Harvard Law School, attributes our adoption of this doctrine largely to our political experience before the Revolution—as being Colonists governed

¹ 7 Works of Hamilton, pp. 197-199, by J. C. Hamilton; 5 *ibid.*, 116.

² Dawson's edition of *Rutgers v. Waddington*, Historical Introduction, p. 33 (1866).

³ McMaster's Hist. People U. S., Vol. I, pp. 219, 220;

New York Packet (Newspaper), Nov. 4, 1784.

⁴ Cooley's Const. Lim. (4th ed.), ch. VII, p. 196, note.

⁵ Chase's Statutes Ohio, Preface, pp. 28-40.

Western Law Monthly, vol. V, p. 3, June, 1863, and August number of same, 1863.

under written charters of government proceeding from the British Crown. He adds: "The terms and limitations of these charters, so many written Constitutions, were enforced by various means—by forfeiture of the charter, by Act of Parliament, by the direct annulling of legislation by the Crown, by judicial proceedings and an ultimate appeal to the Privy Council."¹ On the other hand, Judge Simeon E. Baldwin of Connecticut states that before the Revolution "English precedents had made our ancestors familiar with the omnipotence of Parliament, and some of our Colonial assemblies were deemed to have powers hardly less great, so long as they did not contravene the laws of the mother country or the allegiance due to the British Crown."²

IV. LIMITATIONS OF THIS POWER.

It is a well established qualification of the power of the judiciary to disregard unconstitutional legislation, that when the question involved is political in its nature, the courts are bound by the action of the political department of the government, and must recognize and enforce the law, notwithstanding they consider it repugnant to the Constitution. This rule depends upon the essential nature of the judiciary, and is necessary to preserve the independence of the co-ordinate departments of government. The contrary rule would lead to the absorption of all power by the Courts, and the extinction or degradation of the executive and legislative branches. Among the first to renounce or disclaim political power by the

judiciary was Chief Justice Marshall. In 1805 in delivering the Court's opinion in *Marbury v. Madison*, 1 Cranch, 137 at 170, he said:

"The province of the Court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion. Questions in their nature political, or which are, by the Constitution and laws, submitted to the executive, can never be made in this Court." Again on page 167: "The power of nominating to the Senate, and the power of appointing the person nominated, are political powers, to be exercised by the president according to his own discretion." The question, whether or not a proposed law shall be passed by the legislature, or signed by the executive, is a political question, and therefore the Courts cannot enjoin Congress or the State legislature from passing a statute, nor restrain the president or governor from signing it, even if it be unconstitutional. The legislature and the executive have the right to decide these questions in the first instance on their own responsibility, untrammelled by the opinion of the Courts. They are responsible only to the people for any abuse of authority in these respects. It is true that in Massachusetts, New Hampshire, Maine, Rhode Island and a few other States, the governor and legislature may, if they choose, obtain advice from the judges of the highest State Court in the form of an opinion upon political or quasi political questions; but such opinions are not binding or conclusive as a judgment either upon the Court or upon the other departments.³

¹ "The Origin and Scope of the American Doctrine of Constitutional Law," a Paper read at Chicago, August 9, 1893, by James B. Thayer.

² "The Three Constitutions of Connecticut," in *Papers of New Haven Colony Historical Society*, vol. V, p. 202 (1891).

³ *Commonwealth v. Green*, 12 Allen (Mass.), 155; 126 Mass. 566;

Taylor v. Place, 4 R. I. 362; 60 N. H. 585;

Thayer's "Memorandum on Advisory Opinions" (1885);

"Duty of Judges as Const. Advisers," 24 Am. Law Rev., 366, by H. A. Balguyne.

A judgment, even by the Supreme Court, is, of course, not binding upon the people in their sovereign capacity. If the Court declares a statute unconstitutional, the people may change the Constitution and render the statute constitutional. After the *Dred Scott* decision in 1857 holding the Act of Congress for the regulation of the Northwestern territory unconstitutional, the people of the United States adopted the fourteenth Amendment to the Constitution, and thereby overruled the decision of the Supreme Court and rendered the act constitutional.¹

Neither the executive nor the legislative department is bound to accept the decision of the judiciary upon the constitutionality of a proposed law. The fact that the court has previously decided the question under a similar statute is not conclusive upon the other branches of the government. Although the Supreme Court had held the charter of the Bank of the United States granted by Congress to be constitutional,² this did not prevent President Jackson from vetoing the bill to renew the charter, for the reason that in his opinion it was unconstitutional. The veto power is vested in the president by the Constitution, and is the exercise of a political power, which the courts cannot control. Nor can the president be enjoined from enforcing a statute on the ground that it is unconstitutional. In the case of *Mississippi v. Johnson*, 4 Wallace, 485, an attempt was made to restrain President Johnson from carrying into effect the terms of the "Reconstruction Act," but the Supreme Court held that this was a political question, over which it had no control. In *Georgia v. Stanton*, 6 Wallace, 50, a like attempt was made against Secretary Stanton,

General Grant and others, and was decided in the same way. *Rhode Island v. Massachusetts*, 12 Peters, 669, is sometimes supposed to support a contrary view; but the principal question in that case was that of territorial boundary between the two States, and the political question was merely subsidiary.

Luther v. Borden, 7 Howard (U. S.), 1, involved or grew out of an exciting episode in the history of Rhode Island. This was an action of trespass for breaking into the plaintiff's dwelling house. The defence was that the plaintiff was aiding and abetting an insurrection against the authority of the "Charter" government of the State, and that the defendants were officers of the "Charter" government, with authority to arrest the plaintiff. The plaintiff alleged that the "Charter" government which had been established under the Charter of Charles II in 1663, had been superseded by the "People's" government, established by a majority of the people of Rhode Island in 1841-2. Thomas W. Dorr had been elected governor under the "People's" Constitution, but his effort to assume office was resisted by the officers of the Charter government, and he afterwards left the State without succeeding in his effort to establish his claim to the office, and was finally tried for treason. In deciding the case of *Luther v. Borden* the Supreme Court held that the question as to which government was the lawful government of the State, was not a judicial question, but was a political question, upon which the Court was bound by the decision of the political authorities.

In *Worcester v. Georgia*, 6 Peters, 515, the Court came perilously near to rendering a judgment upon a political question, if it did not actually do so. The result was that Presi-

¹ *Scott v. Sandford*, 19 Howard, 393.

² *McCulloch v. Maryland*, 4 Wheaton, 316.

dent Jackson refused to assist the Court in enforcing the judgment against the State of Georgia, and Worcester was released from imprisonment by Georgia only upon terms dictated by the State, and contrary to the judgment of the Court that he should be set free at once and unconditionally.¹

In holding that Congress had no power to prohibit slavery in certain Territories created out of the Northwestern territory, the court seems to have overstepped the province of the judiciary, and invaded that of the political department.² President Lincoln refused to recognize this decision as binding upon him before its overthrow by the Fourteenth Amendment.

Other authorities relating to the power of the courts to decide political questions are *Morris v. Bulkeley*, 61 Conn., 287 (1892); *Opinions of the Justices*, 55 N. H., 574 (1875), and 60 N. H., 585 (1881); *Boyd v. Thayer*, 143 U. S. 135 (1892).

It has been asserted that the courts can disregard a statute upon the ground that it is contrary to public policy, and that a statute

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repugnant to public policy is void. This view, however, has very few supporters, and the great weight of authority affirms the sound doctrine that the legislature and not the

court is the proper body to determine all questions of public policy, and to decide the expediency or wisdom of any proposed law; that the legislature's decision upon this question is conclusive upon the judiciary, and that the

Courts cannot disregard or pronounce unconstitutional any statute because in their opinion it is contrary to public policy.³

This question arose at an early date in the judicial history of Massachusetts as a State. On February 6, 1811, the House of Representatives requested the opinion of the justices of the Supreme Judicial Court upon three constitutional questions relating to ratable polls of aliens. These questions were answered by Chief Justice Parsons and by Justices Sewall and Parker on February 15, 1811, and in the course of their opinion the justices used this language:

"For although it is not to be presumed that a legislature will violate principles of public policy, yet an intimation of the legislature repugnant to those principles, clearly, manifestly and constitutionally expressed, must have the force of law."⁴

In 1819 Chief Justice Marshall in delivering the opinion of the Supreme Court of the United States thus expressed his view that the courts have no such power: "But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This Court disclaims all pretensions to such a power."⁵

In the License Tax Cases, 5 Wallace, 462 at 468, Chief Justice Chase in delivering the judgment of the Supreme Court said: "This Court can know nothing of public policy except from

¹ Bryce, *American Commonwealth*, vol. 1, p. 362; *Kennedy's Life of Wirt*, vol. II, chs. XV and XVI; *Greeley, American Conflict*, 106;

² *Von Holst, Const. Hist.*, 1750, 1832, 458.

³ *Scott v. Sandford*, 19 Howard, 383.

⁴ *Cooley's Const. Lim.* (4th ed.), ch. VII; and cases cited;

Commonwealth v. McCloskey, 2 Rawle (Pa.), 369, 374; *Bennett v. Boggs, Baldwin* (U. S. Cir. Ct.), 60; *Hills v. Chicago*, 80 Ill., 88.

⁵ *Opinion of the Justices*, 7 Mass., 523 at 524-525.

⁶ *McCulloch v. Maryland*, 4 Wheaton, 316 at 423.

the Constitution and the laws, and the course of administration and decision. It has no legislative powers. It cannot amend or modify any legislative acts. It cannot examine questions as expedient or inexpedient, as politic or impolitic. Considerations of that sort must in general be addressed to the legislature. Questions of policy determined there are concluded here."¹

V. EXTENT AND EFFECT OF THIS POWER.

The seed of this judicial power, planted scarcely more than a century ago, has developed into a mighty legal tree, firmly rooted in

Section 43. American jurisprudence, and extending its protecting arms over a vast population and an immense territory.

Upon the whole, this power has been wisely employed by the Courts, and has proved beneficial to the people. Its exercise has helped to make this a "government of laws and not of men," and has contributed to the stability of our republican institutions. It has acted as a great restraining force upon unjust legislation. It has assisted in solving many of the problems of state which have confronted the American people. It has aided in preserving the boundary line between the powers of the Federal and State governments, and has protected the rights of the individual from injurious legislation.

Hon. Charles Andrews, lately chief judge of the New York Court of Appeals, says in connection with the decision of the United States Supreme Court in *Marbury v. Madison*,

¹ That the judiciary has no power to ignore a statute upon any of these grounds is also decided in *Whittington v. Poole*, 1 Harris & Johns (Md.), 236 at 246 (1892); *Mobile v. Yolie*, 3 Ala., 137; *Sharpless v. Mayor*, 21 Pa. St., 147, 159; *Hedderick v. State*, 101 Ind., 564; *Powell v. Pennsylvania*, 127 U. S., 678, 685; *Trustees of Bishop's Fund v. Rider*, 13 Conn., 87, 104;

1 Cranch, 137, holding an Act of Congress unconstitutional, that: "It was a startling assertion of judicial power. In its possible scope it subjected every act of Congress to the scrutiny of the Court, and to its practical annulment whenever invoked by a party to a judicial proceeding, and relied upon to sustain a claim or defence. It is scarcely too much to say that if the court had faltered here the work of the convention would have failed. There would have been no check on unconstitutional legislation. Congress, influenced by the violence of party spirit, or by the sway of passion or prejudice, would in time have usurped the power reserved to the States and overstepped the limitations of the Constitution, and the States denuded of their rightful powers, would have resisted the usurpation, and anarchy would have resulted,"²

The power may be exerted in a variety of ways and by many different Courts. The State Courts may declare a State statute unconstitutional, either as being repugnant to the State Constitution, or to the United States Constitution. They may also hold an Act of Congress unconstitutional as violating the Federal Constitution;³ but not on the ground that it violates the State Constitution. The Federal Courts may pronounce a State statute unconstitutional, either as being in contravention of the Federal Constitution, or of the State Constitution; though with respect to construing the State Constitution, the Federal Courts are generally bound to follow the decisions of the highest State Court.⁴ They may also declare an Act of Congress unconsti-

Fletcher v. Peck, 6 Cranch, 87.

² 58 Albany Law Journal, p. 9 (1894).

³ *Davidson v. Champion*, 7 Conn., 443;

Weatherbee v. Johnson, 14 Mass., 419;

United States v. Lathrop, 17 Johns. (N. Y.), 4.

⁴ *Calder v. Ball*, 3 Dallas, 386;

Gelpcke v. Dubuque, 1 Wallace, 175.

tutional for the reason that it is contrary to the Federal Constitution;¹ but not for the reason that it is contrary to a State Constitution.

During the half century just passed, this power has developed very rapidly, and has been exerted with increasing frequency. Only twenty statutes of the States and Territories were held unconstitutional by the Supreme Court of the United States during the fifty years from 1790 to 1840, while during a like period from 1840 to 1890, one hundred and fifty-seven statutes of the States and Territories were declared unconstitutional by the same Court.²

What is the effect of holding a statute unconstitutional? Does it nullify the statute? Does it operate as a repeal of the statute? Does it render its enforcement improper by the executive? Is the construction placed upon the Constitution by the Supreme Court binding upon the other departments of government?

Some of these questions open a wide field of inquiry, upon which the authorities are conflicting, which can be only briefly mentioned in this place. It is very clear, however, that a statute is not nullified or repealed in the strict sense when it is pronounced unconstitutional by the Courts. This principle follows from the decisions of the Supreme Court upon the legal tender Acts of Congress, passed in 1862 and 1863, making United States notes a legal tender in payment of debts. In the first case, *Hepburn v. Griswold*, 8 Wallace, 603, decided in 1870, it was held

that the legal tender acts were unconstitutional, yet in the second case, *Knox v. Lee*, 12 Wallace, 457, decided in 1871, it was held that the same acts of Congress were constitutional and enforceable, though there had not been a re-enactment in the meantime by Congress. This point was also decided in the case of *Rahrer, Petitioner*, 140 U. S., 545, 563-565, relating to the importation of intoxicating liquors into a State in original packages.

A judgment, however, generally has great weight with the legislature and the people, and it not infrequently happens that after a statute has been pronounced unconstitutional by the Courts, the legislature will repeal the statute.³

In Massachusetts, after Chief Justice Shaw expressed his opinion that the statute of 1843, reducing judicial salaries, was unconstitutional, it was repealed by the legislature by statute 1844, c. 24. In 1898, the same legislature which enacted the statute of that year relating to the trial of certain crimes in the Municipal Court of Boston, subsequently repealed the statute, because in the meantime the judges of the Municipal Court had held it unconstitutional.

In Rhode Island, the General Assembly of 1786 repealed the statute of August, 1786, after the Superior Court had pronounced it unconstitutional in *Trevett v. Wresden*, decided in September, 1786.⁴

In New Jersey the statute allowing a trial under the seizure laws to be by a jury of six men was repealed after the Court held it un-

¹ *Marbury v. Madison*, 1 Cranch, 137.

² Address on "Influence of the Bar," by J. H. Benton, Jr. (1864), Appendix II, page 41.

Mr. Benton, in this address before the Southern New Hampshire Bar Association, gives the names and dates of all these decisions, and also the names and dates of cases in which Federal statutes were

held unconstitutional by the Federal Supreme Court. His table is very valuable and instructive upon the growth of this doctrine.

³ Relation of the Judiciary to the Constitution, 19 Am. Law Rev., 388 by Wm. M. Meigs.

⁴ 2 Chandler's Crim. Trials, 369; Varnum's Report (Providence, 1787).

constitutional in the case of *Holmes v. Walton*, decided in 1780.¹

In Connecticut the General Assembly enacted on December 24, 1862, that citizens of the State absent therefrom in the military service of the United States, could vote for State officers at places outside the territorial limits of the State. By a supplemental statute, the Governor was authorized and directed to request the opinion of the Judges of the Supreme Court upon the constitutionality of the original act, and, in case the judges should answer in the negative, the Governor was to make proclamation of the fact, and thereupon all persons should be released from the duties imposed by the statute. The judges, in an able opinion by Judge Butler, replied that the statute was repugnant to the Constitution of the State, and the Governor proclaimed the fact, before an election had been held. In August, 1864, an amendment to the Constitution was adopted by the people which authorized such legislation during the Civil war then existing.²

As to the extent to which the judgments of Courts upon constitutional questions should be considered conclusive upon the executive and legislative departments, see a learned article by Sidney G. Fisher of the Philadelphia bar in 21 *American Law Review*, 210, published in 1887.

Notwithstanding all that has been said in favor of this power, it now seems advisable to limit its exercise in some mode. Within the

**Section 44.
Conclusion
and
Suggestions.**

past few years the courts have exerted this power too freely and too often, and sometimes against the interests of the plain people. Cases are numerous in which a

single judge, sometimes sitting in a State Court and sometimes in a Federal Court, has pronounced a State statute unconstitutional, and has refused to recognize it in deciding the case before him. In other cases, a statute has been declared invalid by only a small majority of the whole court. Some of these decisions have affected large numbers of people, and many of them have been disseminated in the public prints and forcibly presented to the public. So frequently has this power been exercised of late years that the people have come to believe that no statute is valid until it has been "tested" in and approved by the Courts. The inevitable result is a loss of public confidence in the legislative department of the government. That the present standing of the legislature is not equal to that of earlier times, seems largely due to the fact that their acts are so often declared unconstitutional by the Courts. If this practice be continued much longer at the present rate, the degradation of the legislature seems certain. Instead of three departments of government with equal and co-ordinate powers, we shall then have only two—the executive and the judicial—and neither of these can improve conditions by constructive measures, but can merely restrain and negative. The need of the times is constructive legislation to improve the social and material condition of the people. To accomplish this purpose, the legislative department should be restored to its former dignity and importance, and the power of the courts should be limited and curtailed.

It is only when the unconstitutionality of the statute is so clear as to be free from doubt, in the opinion of the judges of the highest court in the State or Nation, that this power

Article XIII of Amendments.

¹ *State v. Parkhurst*, 4 Halst (N. J.), 427, 444.

² Opinion of the Judges, 30 Conn. 591, 573, note;

of disregarding the provisions of a statute should be exercised by the judiciary. This was the rule which was recognized and acted upon by the courts in the early days of the doctrine; but in recent years, the courts have ignored and repudiated this rule in practice.

The true rule is not enforced when the will of the legislature is set aside by a court, the members of which stand five to four, or six to three, or seven to two, or even eight to one, on the question of constitutionality. It is only when the highest court is unanimous in opinion against the validity of the statute, that the statute should be disregarded. A change of this nature would restore the legislative department to its rightful position of importance and dignity. Public confidence in the legislature would be revived, and abler men would be elected. Under the circumstances of the case, the requirement of unanimity does not seem unreasonable. When a court refuses to enforce a statute on this ground, it virtually decides that the legislature has exceeded its constitutional powers in passing the statute,

The legislature is bound to consider that question before it enacts the measure, and the passage of the statute indicates that the legislature considered that it possessed the constitutional power in question. It is, therefore, an instance of one department determining the constitutional power of another department of the government. The legislature has no means of enforcing a statute, and if the courts will not enforce it, it becomes a dead letter. As we require the unanimous verdict of twelve jurors to decide questions of fact, it seems only proper to require a unanimous opinion of less than twelve judges to decide this question of law. This would certainly not deprive the judicial department of its rightful functions, and would leave it with greater power than it possesses in any other country of the world.

Until the highest Court in the State or Nation shall have decided that a statute is unconstitutional, no other court in the State or Nation should be allowed to determine that question.

CHAPTER V.

THE COURTS AND JUDGES.

The preceding chapters contain frequent allusions to the different courts established in New England at various periods in its history,

Section 45.

Early Courts

and Judges.

and also some account of their powers and jurisdiction and methods of procedure. The "Court of Assistants" was the name generally applied to the highest court in the respective

colonies during the seventeenth century. This court consisted of the governor of the colony or plantation for the time being, and a certain number of assistants, elected for a term of one year.

In Plymouth Plantation, the Court of Assistants was composed of the governor and one assistant until 1624, when the number of assist-

ants was increased to five; at which time it probably included Allerton, Standish, Edward Winslow and Fuller. This court possessed not only judicial functions, but also legislative and executive functions, as now understood. In some cases, a right of appeal to the whole adult male population seems to have been allowed. One of the duties of the assistants was to advise the governor upon public affairs—a duty somewhat analogous to that of the Governor's Council at present.¹ Bradford was governor during many years, and generally presided over the court.

In Rhode Island the first Court of Assistants was established in 1639, "for the help and ease of conducting public affairs, and to lay out lands." William Hutchinson was the judge, and the seven assistants were William Balston, John Porter, John —, William Freelorne, John Wall, Philip Shearman and William Aspinwall.²

Under the first charter obtained by Roger Williams, the highest court was known as the Colony or General Court of Trials. It was established in 1647, and was composed of a president and four assistants, chosen annually. Each of the four towns of Providence, Portsmouth, Newport, and Warwick, chose an assistant. This court had jurisdiction of the graver crimes and of the more important civil causes, and also appellate jurisdiction over the town or local courts. This court was in existence until the arrival of the second Charter in 1663. Among those who served as judges during this period were Roger Williams, John Clarke, William Coddington, and Samuel Gorton.³

¹ Bradford's Plymouth, 187;

Goodwin's Pilgrim Republic, 150.

² Arnold's Rhode Island (3d ed.) I, 134, 135; II, 157.

The researches of Mr. Arnold have failed to discover the

As early as 1643, a Court of Associates was held in Dover and Portsmouth, now within the limits of New Hampshire, but then under the jurisdiction of Massachusetts. It consisted of one or more of the magistrates or assistants, and one or more commissioners appointed by the General Court of Massachusetts, out of the principal gentlemen of each town. Its jurisdiction extended to the value of twenty pounds. About 1647 the towns were granted permission to choose the associates; but they did not always exercise this right, and sometimes requested the General Court to appoint the associates in accordance with the earlier practice. Appeals lay from the Court of Associates to the Board of Assistants until 1670, when appeals were allowed to the County Court of Norfolk, Massachusetts.⁴

During the first century after the settlement of New England, judicial proceedings were characterized by simplicity and devoutness.

The Puritan dislike of display was manifest in all the early courts. Prayer was an important feature in opening court. If a minister could be conveniently obtained, he was requested to make the opening prayer; but if not accessible, one of the judges offered prayer, and sometimes delivered a speech of a religious nature from the bench. Judge Sewall informs us in his journal that at the opening of the court on July 27, 1686, William Stoughton, who was then at the head of the colonial courts of Massachusetts, but had been educated for the ministry, prayed "excellently" and made a "notable speech." Under date of May 5, 1713, Judge Sewall's journal states that Dr.

**Section 46.
Form and
Ceremony.**

surname of the third assistant, who still remains John —,

³ Thomas Durfee in 4 New England States, 2864, 2865; Rhode Island Colonial Records, I, 191, 222.

⁴ Belknap's New Hampshire, I, 100, 101.

Cotton Mather made "an excellent dedication prayer in the new court chamber," situated in the new Town House of Boston.¹

Before the American Revolution, however, considerable pomp and ceremony had arisen in court proceedings. When the judges travelled upon their circuits, the sheriff of the county, accompanied by many gentlemen, met them at the borders of the shire town, and escorted them to their lodgings, with the blowing of trumpets and great parade. The judges were arrayed in robes of scarlet English cloth and wore broad bands and immense wigs.²

Court was opened and adjourned with the proclamation beginning *Oyer! Oyer! Oyer!* This old French law term, after performing valiant service in English-speaking countries for several centuries, was discarded by order of the Supreme Judicial Court of Massachusetts in 1894, and the form of the opening proclamation ordered to be as follows:

"Hear ye! Hear ye! Hear ye! All persons having anything to do before the Honorable the Justices of the Supreme Judicial Court now sitting at . . . within and for the County of . . . draw near, give your attendance, and you shall be heard.

¹ The former Town House was completely destroyed by fire in 1711, by the fire known as the "great fire" until 1760. The New Town House mentioned by Judge Sewall was finished early in the year 1713, and the first court held therein was on April 27, 1713.

² Washburn Jud. Hist. Mass., 162-163, 246, 261.

³ The forms of other proclamations were ordered to be as follows:

Adjournment for the Day.

Hear ye! Hear ye! Hear ye! All persons having anything further to do before the Honorable the Justices of the Supreme Judicial Court now sitting at . . . within and for the County of . . . at present, depart, and give your attendance at this place tomorrow morning at . . . o'clock, to which time and place the sitting of this court is now adjourned.

God save the Commonwealth of Massachusetts.

Previous Proclamation.

Hear ye! Hear ye! Hear ye! All persons having

"God save the Commonwealth of Massachusetts."³

Under the Massachusetts charter of William and Mary it was customary for jury trials to take place before the whole bench of judges, and this practice prevailed for many years after the adoption of the Constitution of 1780, especially in criminal trials. The trials at Salem for Witchcraft in 1692, occurred before the full bench of seven judges commissioned by Governor Phips.⁴ The Superior Court of Judicature which was created under this charter in 1699, consisted of five judges, all of whom were expected to attend and participate in jury trials in each county, though three judges constituted a quorum. The same arrangement was continued under the Constitution of 1780 until the year 1799. During this period of one hundred years the court was held for all purposes in each county by a full bench, and "all trials were in effect trials at bar, and were conducted in the presence of the full court, and not less than three were competent to preside at a jury trial."⁵ In important criminal causes the full court sat with the jury until well into the nineteenth century.⁶

**Section 47.
Jury Trials
Before the
Whole Court.**

anything to do before the Honorable the Justices of the Supreme Judicial Court now sitting at . . . within and for the County of . . . draw near, and give your attendance, for this sitting of the Court is about to be adjourned without day.

Final Proclamation.

Hear ye! Hear ye! Hear ye! All persons having anything to do before the Honorable the Justices of the Supreme Court now sitting at . . . within and for the County of . . . at present, depart, and give your attendance upon a new summons, as this sitting of the court is now adjourned without day.

God save the Commonwealth of Massachusetts.

⁴ Ante, section 11, and authorities cited.

⁵ Shaw, C. J., in Sketch of Chief Justice Parker, 9 Pick. 569 (1830).

⁶ Thomas, J., in *Commonwealth v. Anthes*, 5 Gray, 274 (1857).

In the early colonial period the courts did not set aside verdicts. This practice did not arise in England until after the settlement of

Section 48.
Setting
aside
verdicts
and granting
new trials.

New England. If the court and the jury disagreed the case could be carried to the General Court for final decision. The statute of Massachusetts of 1672 allowed the judges, if they disapproved of the verdict to send the jury out for further consideration; but if the jury persisted in their verdict, the court was obliged to accept and record it.¹ At the trial of Rebecca Nurse for witchcraft in 1692, the jury at first brought in a verdict of not guilty, but after being sent out to reconsider, they returned a verdict of guilty; upon which judgment was entered, and Rebecca Nurse was hung.² Another method of securing a new trial was by attaint.

Until the American Revolution, the verdict of a jury was considered as well-nigh conclusive, and new trials were very seldom granted. In 1763 the Superior Court of Massachusetts intimated that where the verdict was clearly against the law and the evidence a new trial would be granted; but it held that where there was evidence on both sides, and some evidence in support of the verdict, and the court could not see clearly that the verdict was against the law and the evidence, a new trial would not be granted.³

In 1838, Chief Justice Shaw said: "For a long time it was considered doubtful whether a new trial could be granted where there was

any evidence on both sides, and it was considered that a new trial could only regularly be granted where the verdict was without evidence, or against the whole evidence. It has, however, been extended to cases where the verdict is clearly against the weight of evidence, although evidence was given on both sides."⁴

It has always been considered essential in New England that the courts should be impartial and disinterested. The judges should not possess any pecuniary interest in the result of cases decided by them, nor should they pay any respect to persons in rendering judgment. The principle early assumed the form of a maxim, and it became fundamental that no man could be a judge in his own case. A judgment rendered by a judge who has a pecuniary interest in the suit is not merely voidable, but is absolutely null and void.⁵

Section 49.
Impartiality
and
Disinterested-
ness.

A like rule applies to justices of the peace,⁶ to jurors,⁷ and to appraisers of land set off on execution.⁸ In 1798, Mr. Justice Chase of the Supreme Court of the United States expressed the opinion that a statute which made a man a judge in his own cause was void,⁹ and under our present Constitution a judgment rendered by an interested judge in his own favor would seem to be void as depriving the other party of his property without due process of law. Article 29 of the Massachusetts Declaration of Rights declared: "It is essential to the preservation of the rights of every individual, his life, liberty, property, and char-

¹ Greene v. Baker, Records, 1680, fol. 114.

² Ante, section 11, and authorities cited.

³ Angier v. Jackson, Quincy's Reports, 84.

⁴ Miller v. Baker, 30 Pick. 285, 289.

⁵ Hall v. Thayer, 105 Mass. 219 (1870);
Spring Valley Water Works v. Schottler, 110 U. S.
347, 364;

London v. Wood, 12 Modern, 669.

Dimes v. Proprietors, 3 H. L. Cases, 759, 760.

⁶ Judd v. Tryon, 131 Mass. 345 (1881).

⁷ Davis v. Allen, 11 Pick. 466 (1831).

⁸ Hesketh v. Braddock, 3 Burr. 1856.

⁹ Fox v. Hills, 1 Conn. 295 (1815).

Wolcott v. Ely, 2 Allen, 338 (1861).

McGough v. Wellington, 6 Allen, 505.

⁵ Calder v. Bull, 3 Dallas, 384, 388.

acter, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit."

Chief Justice Shaw considered impartiality one of the highest attributes of the judge. In his address delivered before the Bar of Berkshire in 1830 on the life and character of Chief Justice Parker, after remarking upon the political animosities and personal passions which prevailed while Judge Parker was upon the bench, added: "Yet in no instance has any serious imputation of partiality in the exercise of his functions as a judge, been made against him."¹

Rufus Choate in his great speech delivered on July 14, 1853, in the Massachusetts Constitutional Convention of 1853, upon the tenure of judicial office, thus described his ideal of "the good judge":

"In the first place he should be profoundly learned in all the learning of the law, and he must know how to use that learning. . . .

"In the next place, he must be a man, not merely upright, nor merely honest and well intentioned, —this of course,—but a man who will not respect persons in judgment. . . . He shall know nothing about the parties, everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; nothing for his sovereign. If on one side is the executive power and the legislature and the people, —the sources of his honors, the givers of his daily bread, and on the other an individual nameless and odious, his eye is to see neither great nor small; attending only to the

'trepidations of the balance.' If a law is passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it, in which the whole community is on one side and an individual nameless and odious on the other, and he believes it to be against the Constitution, he must so declare it, or there is no judge. . . .

"And finally he must possess the perfect confidence of the community, that he bear not the sword in vain. To be honest, to be no respecter of persons, is not yet enough. He must be believed such."²

The principle has been extended and applied in many different ways. So long as the General Court of Massachusetts exercised judicial functions by appeal from the ordinary courts of justice, practising attorneys were not eligible. In 1663, a law was passed prohibiting "usual and common attorneys" from sitting in the General Court. John Read, who represented Boston in 1738, seems to have been the first practising lawyer to sit in the legislature of Massachusetts.³

In 1650, Massachusetts passed a law prohibiting a judge to vote in any case where either the plaintiff or defendant or other party to the suit was his father, or son, or brother, or uncle, or nephew, or landlord, or tenant; but the judge was permitted to "give reasonable advice in the case."⁴

The passage of this statute of 1650 may have been occasioned by the conduct of Richard Bellingham in 1642. On November 9, 1641, while governor, he married Miss Penelope Pellham; performed the marriage ceremony himself, and refused to publish the intention of marriage, as required by the

¹ 9 Pick. 576.

² Addresses and orations of Rufus Choate (Boston 1878); reprinted in 13 *Harvard Law Review* 1, 5, 6 (1899).

³ Hutchinson, III, 104 note.

⁴ Washburn, 51.

⁵ Washburn, 41, citing Col. Laws (ed. 1660) p. 91.

statute of 1639. For this offence the grand jury, or "great inquest," indicted him and his case was called for trial in June, 1642, while he was one of the magistrates and entitled to sit as a judge. It was customary under these circumstances for the accused to leave the bench, but Mr. Bellingham refused to do so, unless commended by the governor, and claimed the right to sit as a judge in his own case. Winthrop was then governor, and although he was greatly scandalized by the proceedings, he seems not to have exerted his authority, and the case was dropped.¹

Judge Samuel Sewall in charging the grand jury on May 5, 1713, said: "Let not any judge delauch this bench by abiding on it when his own cause comes under trial. May the judges always discern the right, and dispense justice with a most stable, permanent impartiality."²

In *Stobhard v. Moulthrop*, 9 Conn., 502, decided by the Supreme Court of Errors of Connecticut in 1833, it was held that, as the duties of commissioners of insolvent estates were judicial, a brother of one of the creditors of the estate could not act as a commissioner. The statute then in force provided: "That whenever there shall be so near a relationship between any judge or justice of the peace and any party in a civil action, as between father and son by nature or marriage, brother and brother in like manner, uncle and nephew in like manner, landlord and tenant; or whenever any judge or justice may be liable in any manner to contribute out of his estate to the damages, costs or expenses of any action; or whenever he may receive a direct pecuniary benefit by the determination thereof; in all

such actions, the said judge or justice shall be disqualified to act as judge or render judgment." In an able opinion by Judge Church it was laid down that the purpose of this and similar statutes was to secure impartiality, and that slight differences in phraseology would be disregarded. "Thus, the statute under consideration requires commissioners to be 'disinterested and judicious persons.' That providing for the appointment of appraisers of the estate of deceased persons, requires 'judicious disinterested freeholders.' That directing the appraisal of land taken on execution provides that the appraisers shall be 'indifferent freeholders.' The law directing the distribution of deceased persons' estates provides for the appointment of 'sufficient freeholders'; while the statute providing for the distribution of estates between adults and minors, directs the appointment 'of some meet person.'" (Page 506). It was held that all these statutes had the same great object in view, and were not to receive conflicting constructions by the court.

In 1856 the Supreme Judicial Court of Maine decided that a justice of the peace, who was also attorney for one of the parties in an action, was disqualified from acting as justice in the taking of a deposition to be used in such action.³

A judge who has been attorney or counsel for a party during a preceding stage of the litigation should not sit at the trial on the facts, or at the hearing upon questions of law. A stockholder or employee of a corporation should not serve as judge or juror in a case where the corporation is either plaintiff or defendant.

¹ *Savage's Winthrop*, II, 31, 32.

² The point of Judge Sewall's remark is sharpened by the circumstance that in 1694 an action stood for trial, but was not actually tried at that time, in

which Sewall was plaintiff and his associate on the bench, Judge Winthrop, was defendant. *Washburn* p. 153.

³ *Cutler v. Maker*, 41 Maine, 594.

The Massachusetts Charter of 1692 conferred upon the Governor and Council the

**Section 50.
Tenure of
Office.**

power of appointing the judges, but their tenure of office was not regulated, and until 1774 the judges were removable at will by the Governor and Council.¹ By the Act of Parliament of 1774, "for the better regulating of the government of Massachusetts Bay," the governor was given power to appoint the judges, even of the Superior Court, without the consent of the Council, and the judges were to hold office during the pleasure of the king.

One of the grievances enumerated in the Declaration of Independence was that the king "had made judges dependent on his will alone for the tenure of their offices and the amount and payment of their salaries."

By chapter 3, article 1, of the Massachusetts Constitution "All judicial officers . . . shall hold their office during good behaviour, excepting such concerning whom there is different provision made in this constitution: provided, nevertheless, the Governor, with the consent of the Council, may remove them upon the address of both houses of the legislature."

This provision applies not only to the judges of the higher courts of record, such as the Supreme Judicial and the Superior Courts, but also to the judges of probate and insolvency, and to the municipal and police and district court judges. In 1840, a question arose as to whether certain police court judges held their offices during good behavior, or merely for the term of seven years, and the governor requested the opinion of the justices of the Supreme Judicial Court. Chief Justice Shaw and Justices Putnam, Wilde and Dewey re-

sponded that such judges held during good behavior.²

In the Constitutional Convention of 1853 a strenuous effort was made to change the tenure of judicial office from appointment by the governor during good behavior to election by the people for a term of years. It was in opposition to these proposed changes that Rufus Choate, then in the full maturity of his great powers, delivered his celebrated speech—a speech which has recently been recalled to public attention by his gifted relative, Joseph H. Choate of New York, now ambassador to Great Britain. His arguments and his influence contributed largely in preserving the tenure of office prescribed in the original Constitution of 1780, and Massachusetts is to-day one of the very few States in which the judges hold office during good behavior and are appointed by the governor. The decision reached in the Constitutional Convention of 1853 was in favor of limiting the term of office of subsequently appointed judges to ten years; but the people rejected this Constitution.

Upon the establishment of the Supreme Court of Connecticut in 1711, the judges were appointed annually by the General Assembly, and so continued for many years.³

The Constitution of 1818 ordained that the judges of the Supreme Court and of the Superior Court should be appointed by the General Assembly, and hold their offices during good behavior. They were made subject to removal by impeachment, and it was further provided that "the Governor shall also remove them on the address of two-thirds of the members of each house of the General Assembly."⁴

In 1856 an amendment to the Constitution

¹ Washburn, page 100.

² Opinion of the Justices, 3 Cushing, 584.

³ Judicial Hist. Conn. 135, 136 (1895).

⁴ Conn. Const., Art. 5, Sect. 3.

was adopted, by which it was provided that the judges should hold office for a term of eight years, but not after attaining the age of seventy years.¹

In Vermont the Constitution of 1793 empowered the General Assembly to elect the judges of the Supreme Court, without specifying their term of office; but by a subsequent amendment to the Constitution their term of office was fixed at two years.²

All the judicial officers in New Hampshire are nominated and appointed by the Governor and Council. They hold office during good behavior; but may be removed by the Governor and Council upon the address of both houses of the legislature.³

In Maine all judicial officers hold for the term of seven years; but may be removed by impeachment, or by address of both branches of the legislature to the executive.⁴ The judges are appointed by the Governor with the advice and consent of the Council.⁵

The judges of the Superior Court of Judicature of Rhode Island were chosen annually by the General Assembly from its establishment in 1747.⁶

The Constitution of the "State of Rhode Island and Providence Plantations," adopted in 1842, declared that "the judges of the Supreme Court shall be elected by the two houses in grand committee," and that they shall hold their offices until their places "be declared vacant by a resolution of the General Assembly to that effect. . . . But a judge of any

court shall be removed from office if, upon impeachment, he shall be found guilty of any official misdemeanor."⁷

The minute provisions in the Massachusetts Constitution of 1780,⁸ and of other New England States, prohibiting the holding of inconsistent public offices by the same person, arose from the abuses of plural offices in the provincial period. There was no law which prevented a man from holding as many offices as he could get, and some persons were very successful in this line of effort. As James Otis said in 1762: "Instances may be found, where a man of abilities shall monopolize a power proportionate to all those of Lord Chief Baron of the Exchequer, Lord Chief Justice of both branches, Lord High Treasurer, and Lord Chancellor of Great Britain, united in one single person." Thomas Hutchinson in 1762 was at the same time chief justice, lieutenant-governor, a councillor, and a judge of probate for the county of Suffolk.⁹

The Supreme Judicial Court is the only court of Massachusetts which ranks as a constitutional court, in the sense that it cannot be abolished by the legislature.¹⁰ It was established by the first constitution of 1780, and is the direct lineal successor of the "Superior Court of Judicature, Court of Assize and General Gaol Delivery," established in 1699, under the charter of William and Mary.¹¹

This year (1899), it will complete the second

**Section 51.
Constitutional
and
Legislative
Courts.**

¹ Conn. Const. Amendment, 12.

² Vt. Const., ch. 2, sect. 9.

³ Vt. Const. Amendment, 10.

⁴ Vt. Const. Amendment, 26.

⁵ N. H. Const., II, Articles 45, 72.

⁶ Maine Const. Art. 6, sect. 4.

⁷ Maine Const. Art. 5, sect. 8.

⁸ Arnold's Rhode Island, II, 157 (3d ed.).

⁹ R. I. Const. Art. 10, sect. 4.

¹⁰ Declaration of Rights, Art. 30; Const. c. 6, sect. 2.

¹¹ Quincy's Mass. Reports, App. I, page 426;

Minor's Hist. Mass. II, 79 note;

Washburn's Jur. Hist. 159.

¹² Horace Gray in pamphlet on "The power of the Legislature to create and abolish courts of Justice" (Boston, 1859).

¹³ Russell Tray in paper entitled "The Supreme Judicial Court of Massachusetts," 13 Medico-Legal Journal, 225, 231 (September, 1895).

century of its existence as the highest court of the Province and of the Commonwealth. It is probably the oldest court in the United States, with respect to continuous and unbroken existence.

All the other State courts of Massachusetts have been created by the legislature, and may be abolished by the legislature. The Probate Court comes the nearest to being a constitutional court. It was in existence prior to the adoption of the Constitution of 1780, and was recognized by that instrument. Governor Hancock issued a proclamation on November 2, 1780, by which the then judges of probate were continued in office, and soon afterward he appointed and commissioned probate judges, who continued to transact business until the passage of the statute of 1783, c. 16. This statute established the County Courts of Probate, with original jurisdiction, and gave a right of appeal to the Supreme Judicial Court as the Supreme Court of Probate. In the language of Chief Justice Shaw sustaining the validity of the statute of 1858, c. 33: "The probate court was a judiciary under the Constitution, and its jurisdiction might be modified, enlarged, diminished or transferred, in the same manner as the jurisdiction of all other courts subordinate to the Supreme Judicial Court."¹

It was ordained by the original constitution that "The General Court shall forever have full power and authority to create and constitute judicatories and courts of record, or other courts, giving them jurisdiction over all matters criminal or civil." This power to establish courts, coupled with authority to define and limit the powers and duties of civil offi-

cers, confers upon the legislature the power to fix and limit the jurisdiction of such courts, and to change, modify and abolish them at any time. The legislature has frequently exercised this power. The old Court of Sessions furnishes a striking illustration. "Originally composed of all the justices of peace of the county, and invested with a considerable criminal jurisdiction; then composed of a smaller number of judges; afterwards its judicial powers were transferred to the Court of Common Pleas, and its administrative powers, first to commissioners of highway, then to county commissioners; and ultimately the entire abolition of the Court of Sessions itself."² The Court of Common Pleas had a similar experience. It was established in 1820 and abolished in 1859.

In 1856 the legislature established Courts of Insolvency and transferred to them all the jurisdiction of commissioners of insolvency, by the statute of 1856, c. 284. This act was held constitutional by the Supreme Judicial Court in 1857.³

The legislature has also established police, district and municipal courts, and has prescribed their jurisdiction and powers. Trial by jury in these lower courts is not required by the Constitution, if the defendant has an unfettered right of appeal to a higher court, where trial by jury is allowed.⁴

The present Superior Court is the great trial court of the Commonwealth. Its jurisdiction has been repeatedly enlarged and in it nearly all trials by jury now occur. It was established in 1859. In 1883 jurisdiction in equity was conferred upon the Superior Court. In 1887 exclusive original jurisdiction in causes of di-

¹ Russell v. Howe, 12 Gray, 147, 153 (1858).

² Shaw, C. J., Dearborn v. Ames, 8 Gray, 1, 14 (1857).

³ Dearborn v. Ames, 8 Gray, 1;

Opinion of the Justices, 8 Gray, 20.

⁴ Jones v. Robbins, 8 Gray, 329.

voice and nullity of marriage was given to it; and in 1891, jurisdiction of capital crimes. The whole trend of recent legislation has been in the direction of increasing the duties of this court, and of relieving the Supreme Judicial Court of trials of fact, in order that the latter may have more time for the consideration and determination of questions of law, sitting as a full bench. The Superior Court has jurisdiction throughout the Commonwealth, and the judges are not confined to one county, but sit by turns in all the counties, as arranged by the judges themselves.

Until 1772 judicial salaries in Massachusetts were determined by the legislature, and were

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Judicial
Salaries.

very small and were often changed, and sometimes reduced in amount, in order to show the legislature's disapprobation of judicial action. Judge William Hawthorn of Salem, who is described by Washburn as a man "of great influence in the Colony," received the munificent sum of fifty pounds in 1702 for a year's salary. In 1748 the five judges of the Superior Court received less than \$350 each. In Governor Hutchinson's time the salaries were about one hundred and twenty pounds sterling, with a small allowance for travelling expenses.¹

In 1772, the British government endeavored to conciliate the Massachusetts judges of the Superior Court by increasing their salaries and by paying them out of the royal treasury, instead of out of the Province treasury. The salary of the chief justice was raised from two hundred pounds to four hundred pounds, and that of the associate judges from one hundred and sixty pounds to two hundred pounds each. The colonists, however, suspected a

sinister motive in this change, and the measure became very unpopular and aroused so much opposition that all the judges, except Chief Justice Oliver, refused to accept salaries from the Crown.²

Chief Justice Oliver excused his conduct in accepting a larger salary from the Crown, upon the ground that his salary of two hundred pounds allowed by the Province was too small to live upon, and that while he had held the office he had expended three thousand pounds in excess of his salary. This excuse, however, did not satisfy the House of Representatives, and in their impeachment proceedings against Oliver one of the charges against him was his action upon this question. The Council, to whom these articles of impeachment were presented, never acted upon the matter, however, for the reason that Governor Hutchinson refused to preside, contending that the Council was without jurisdiction to try impeachments, and the power of the Council to proceed in the governor's absence was at least doubtful.³

Upon the adoption of the Constitution of Massachusetts in 1780, the Superior Court became the Supreme Judicial Court, and has continued to the present time to be the highest court of law and equity and probate in the Commonwealth. On February 12, 1781, the legislature enacted that the salaries of the justices of this court should be three hundred and twenty pounds for the chief justice, and three hundred pounds for each of the associate justices per year, to be "computed in silver at six shillings and eight pence per ounce, and payable either in silver or bills of credit equivalent thereto."

The judges of the lower courts were not paid salaries, but merely fees for services actually

¹ Washburn, 23, 160, 161;
Hutchinson, II, 376 note (8d ed.)

² Washburn, 100, 162.

³ Washburn, 161, 162.

performed, for upward of forty years following the adoption of the Constitution. It was not until 1821 that the judges of the Court of Common Pleas were paid salaries, and not until 1824 that salaries were established by statute for the judges of the Probate Courts.¹

Since Massachusetts became a State, only one attempt to reduce the salary of the judges of the Supreme Judicial Court has been made by the legislature. In 1843, a statute was passed for that purpose; but Chief Justice Shaw held it unconstitutional, and refused to accept any salary until the legislature repealed the act in 1844. The 29th Article of the Declaration of Rights ordains that these judges "should have honorable salaries ascertained and established by standing laws."

The judges in the other New England States were no better paid than in Massachusetts. In 1702 the judges of the County Courts of Connecticut received the large and munificent sum of seven shillings a day while holding court. In 1750 the fees of the chief judge of the Superior Court had advanced to twelve shillings a day, while the assistant judges received nine shillings a day. In 1787 the chief justice was paid an annual salary of seven hundred and fifty dollars, and the associate judges of the highest court, an annual salary of six hundred and sixty-seven dollars each, "in lieu of day wages and expenses, except dining expenses for the court."² It is to be hoped that the judges dined well!

In 1665 the judges of the General Court of Rhode Island were allowed three shillings a day for attendance at court, and forfeited six shillings a day if absent without sufficient ex-

cuse, and each absentee was subjected to a fine of five pounds in case no quorum appeared at court. In 1695 the assistants received four pounds each annually, the deputy governor five pounds, and the governor ten pounds, for all their duties to the Colony, judicial and otherwise combined.³

The judges of the higher court until 1783 did not receive salaries, but merely a small per diem for actual attendance and a share of the fees paid by litigants. Since 1783, they have generally received salaries. In 1822 the chief justice of the highest court in Rhode Island received only \$250 a year, and the associates \$200 each.⁴

By the laws of New England, women whether married or unmarried, have never been allowed to officiate as judges in the courts of justice. This rule accords with the English law. The nearest approach to a woman judge was probably the celebrated Anne, Countess of Pembroke, Dorset and Montgomery, who held the office of hereditary sheriff of Westmoreland in the seventeenth century, and who, upon the authority of Butler's note to Coke on Littleton, discharged the duties of sheriff in person, and at the Appley assizes sat with the judges on the bench.⁵ Although the duties of sheriff were partly judicial, it is more than probable that her sitting upon the bench was by invitation of the judges, and not in discharge of any judicial functions.⁶

Within recent years the right of women to serve as justices of the peace and notaries public has received some attention from the legis-

**Section 53.
Women
as Judges,
Notaries Public
and Justices
of the Peace.**

¹ "Power of the Legislature to create and abolish Courts of Justice," 10-13, by Horace Gray (1858);

Mass. St. 1820, c. 79, sect. 10, 11;

Mass. St. 1823, c. 141, sect. 1.

² Judicial Hist. Conn. 180.

³ Thomas Durfee in 4 New England States, 2367.

⁴ Thomas Durfee in 4 New England States, 2367.

⁵ Coke on Littleton, §26 a, note 280.

⁶ Gray, C. J., in Robinson's Case, 131 Mass. 376, 378, citing 4 Craik's Romance of the Peerage, 162.

latures and courts. In June, 1871, the opinion of the justices of the Supreme Judicial Court of Massachusetts was requested by the Governor and Council upon the question of the legal validity of the appointment of a woman as justice of the peace. Chief Justice Chapman and Justices Gray, Wells, Colt, Ames and Morton, replied in the negative for the following reasons: "By the Constitution of the Commonwealth, the office of justice of the peace is a judicial office, and must be exercised by the officer in person, and a woman, whether married or unmarried, cannot be appointed to such an office. The law of Massachusetts at the time of the adoption of the Constitution, the whole frame and purport of the instrument itself, and the universal understanding and unbroken practical construction for the greater part of a century afterwards, all support this conclusion, and are inconsistent with any other. It follows that, if a woman should be formally appointed and commissioned as a justice of the peace, she could have no constitutional or legal authority to exercise any of the functions appertaining to that office."¹

Similar views have been expressed with relation to women acting as notaries public.

Although in Massachusetts the office of notary public is not judicial in its nature, it is nevertheless a public office, the duties of which must be performed by the notary personally and cannot be performed by deputy, and a record must be kept of some of his official acts. In March, 1890, it was accordingly stated by the justices of the Supreme Judicial Court, in answer to a question propounded by the Governor and Council, that, under the existing statutes, a woman could not lawfully be appointed a notary public.² In April, 1896, the further opinion was expressed by the justices, in reply to a request of the House of Representatives, that the legislature had not the constitutional power to authorize the Governor, by and with the advice and consent of the Council, to appoint women notaries public.³

In Maine it has also been held by a majority of the justices of the Supreme Judicial Court, consisting of Chief Justice Appleton and Justices Cutting, Danforth, Virgin and Peters, that under the constitution a woman could not lawfully be appointed a justice of the peace, because it was a judicial office, which could be filled only by a man. Justices Walton, Dickerson and Barrows, however, dissented.⁴

¹ Opinion of the Justices, 107 Mass. 601.

² Opinion of the Justices, 130 Mass. 586.

³ Opinion of the Justices, 165 Mass. 599.

⁴ Opinion of the Justices, 62 Maine 596 (1874).



CHAPTER VI.

THE JURY AND GRAND JURY.

The powers, duties and benefits of the jury and grand jury were well understood and appreciated by the first settlers of New England. Indictment by grand jury and trial by petty jury were recognized as fundamental rights of Englishmen. In all the New England colonies, with a single exception for a short period, they were early employed. The jury generally consisted of twelve men selected from the body of the community, and sworn to decide any disputed matter of fact by judging upon evidence lawfully submitted to them; and conformed substantially to the definition given by Thomas Starkie in his well-known article on Trial by Jury, published in the *Law Review* for August, 1845. The grand jury generally consisted of twelve to twenty-four men.

In Plymouth Plantation we find the first use of the jury and of the grand jury. On December 27, 1623, it was enacted by Plymouth Colony that "all criminal facts and also all matters of trespasses and debts between man and man, should be tried by the verdict of twelve honest men, to be impanelled by authority, in form of a jury, upon their oath." Up to this time all trials had been held by the whole body of freemen.¹

In 1630 the grand jury of Plymouth Plantation indicted John Billington for the murder

of John Neweomen; and he was subsequently tried by a petty jury, found guilty and executed.²

In 1631 a jury trial occurred at Boston in the civil action of *Dexter v. Endicott*.³

In 1633 an indictment was framed against Captain Stone on the charge of adultery; but the "great jury" returned no bill under the form of "ignoramus."⁴

Arthur Pench, Thomas Jackson and Richard Stinnings were tried by a jury of Plymouth in 1638 for the murder of an Indian, and were all found guilty and hung.⁵

According to Governor Winthrop, the first grand jury in the Massachusetts Plantation was in September, 1635, "who presented above one hundred offences, and among others, some of the magistrates."⁶

Hubbard corroborates Winthrop upon the time, September, 1635, and adds: "It had been well that all following juries had been as quicksighted; it might have prevented a great number of evils that are ready to break out in every place by men born in sin, unless it be by due severity provided against."⁷

After 1635 all criminal prosecutions in this Colony seem to have been based upon the inquest or indictment of a grand jury.⁸

Thomas Leckford in his book entitled "Plain Dealing, or News from New England," published in 1642, thus describes the system then

¹ Goodwin's *Pilgrim Republic*, 351.

² Bradford's *Plymouth*, 329, 339 (ed. 1898);

Savage's *Winthrop*, I, 43.

³ Savage's *Winthrop*, I, 64.

⁴ Washburn, 41.

⁵ Bradford's *Plymouth* (ed. 1898), 432-433.

⁶ Savage's *Winthrop*, I, 108.

⁷ Hubbard's *New England*, 150 (ed. 1849).

⁸ Washburn, 34; Hubbard, 159.

in use. "Twice a year, in the said great quarter courts, held before the general courts, are two grand juries sworn for the jurisdiction, one for one court, and the other for the other; and they are charged to inquire and present offences reduced by the Governor, who gives the charge, most on end, under the heads of the ten commandments."¹

At the time of the settlement of New England, the grand jury was an informing and accusing tribunal, without whose previous action no person charged with a felony could be tried, except in a few special cases. "And in the struggles which at times arose in England between the powers of the king and the rights of the subject, it often stood as a barrier against persecution in his name; until, at length, it came to be regarded as an institution by which the subject was rendered secure against oppression from unfounded prosecutions of the crown. In this country from the popular character of our institutions, there has seldom been any contest between the government and the citizen which required the existence of the grand jury as a protection against oppressive action of the government. Yet the institution was adopted in this country, and is continued from considerations similar to those which give to it its chief value in England, and is designed as a means, not only of bringing to trial persons accused of public offences upon just grounds, but also as a means of protecting the citizen against unfounded accusation, whether it comes from government, or be prompted by partisan passion or private enmity. No person shall be required, according to the fundamental law of the country, except

in the cases mentioned, to answer for any of the higher crimes unless this body, consisting of not less than sixteen nor more than twenty-three good and lawful men, selected from the body of the district, shall declare, upon careful deliberation, under the solemnity of an oath, that there is good reason for his accusation and trial."²

In 1644 occurred the famous jury trial at Boston before all the magistrates, in which Lady La Tour recovered a verdict of two thousand pounds for delay in her voyage at sea.³

In 1639, quarterly trials by a jury of twelve men were provided for in Rhode Island.⁴

In Connecticut it was enacted as early as 1643 that a grand jury of twelve or fourteen able men should be warned to appear at court in September of each year, or whenever the governor or court should find it necessary. Shortly after 1666, when the county courts were established, the grand jury met annually at the County Court in each of the four counties.⁵ Trial by jury is "co-eval with our government," according to Judge Swift of Connecticut, and is "one of the most valuable privileges that can be enjoyed in civil society, and essential to the preservation of civil liberty."⁶

During the brief existence of New Haven as a distinct colony, which ceased by union with Connecticut in 1664, trial by jury was not allowed. Moses had not instituted or permitted trial by jury, and the strict followers of the Bible who made the laws of New Haven, preferred the ancient law-giver to any modern one. In this respect New Haven stood alone;⁷ and carried the views of Moses much further

¹ Quoted in Savage's *Winthrop*, II, 44.

² Field, J., in charge to grand jury, 2 Sawyer, 667.

³ Savage's *Winthrop*, I, 247, 248.

⁴ Arnold's *Rhode Island*, 135.

⁵ *Judicial Hist. Conn.*, 171, 173.

⁶ Swift's *System*, II, 230.

⁷ *Jud. Hist. Conn.*, 68, 163 (1895).

than the other New England colonies, all of which not only practised trial by jury but regarded this form of trial as essential to liberty.

Non-church members were not allowed for some years to serve as jurors in Massachusetts Bay, and only members of the Puritan church were eligible to jury service.

In 1662 this practice was prohibited by royal command, and in 1665 it was abandoned.¹

A peculiar provision in the early law of jury trial was that which allowed the jury, or any one of the jurors, to consult with and receive advice from any person who happened to be in court at the time. In 1641 it was expressly enacted in the Massachusetts Body of Liberties, article 76, that: "Whosoever any jurie of trials or Jurours are not cleare in their judgements or consciences concerning any cause wherein they are to give their verdict, they shall have libertie in open court to advise with any man they thinke fit to resolve or direct them, before they give in their verdict."²

Article 29 of the Body of Liberties of 1641 allowed the plaintiff and defendant by mutual consent to choose whether the action should be tried by "the Bench or by a Jurie, unless it be where the law upon just reason hath otherwise determined."

In the seventeenth century, trial by jury seems to have been the ordinary form of trial — in criminal as well as in civil matters—in equity as well as in common law proceedings, except when the amount involved was small. Thomas Leckford states in his "Plain Dealing, or News from New Eng-

land," published in 1642, that "matters of debt, trespass, and upon the case, and equity, yea, and of heresy also, are tried by a jury." Even the admiralty courts, when exercising criminal jurisdiction employed juries. In 1717, a famous trial by jury of pirates occurred in Boston, in a special court of admiralty convened for this purpose. The jury found six of the pirates guilty, and they were executed on November 15, 1717.³

When only a small sum was involved in a civil action, trial by jury was not allowed. In Connecticut it was enacted in 1644 that actions under forty shillings should be tried by a court of magistrates without a jury. "In 1689 jurisdiction of these cases was transferred to an assistant or a commissioner with the selectmen of the town, the aggrieved party having liberty of review to the next County Court; and in 1702 it was vested in an assistant or justice of the peace. In 1717 no appeal was allowed under ten shillings; in 1724 the limit was extended to twenty shillings; and in 1736 if debt was due by bond, etc., and did not exceed forty shillings, no appeal was allowed. In 1767 the jurisdiction of a single magistrate was raised to five pounds, and two years later the right of appeal in such cases was taken away."⁴

The Constitution of the United States as originally adopted did not secure the right of trial by jury in civil cases; but by the seventh amendment to the Constitution it is ordained: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." This provision applies to trials in the courts of the United States, but not to

¹ Hutchinson, I, 80;

Leckford's Plain Dealing;

Savage's Winthrop, II, 209 note.

² Thomas, J., in *Commonwealth v. Anthes*, 5 Gray, 276.

³ Hutchinson (3d ed.), II, 223 note.

⁴ Carpenter, J., in *Curtis v. Giff*, 34 Conn. 49, 55.

trials in the State courts. The States have the power to regulate or abolish trials by jury in their own courts, unrestrained by the Federal Constitution. Jury trial is not a privilege or immunity of national citizenship which the States are forbidden to abridge by the fourteenth amendment to the Constitution. The right may be waived by consent of parties in the Federal courts; but a territorial statute prohibiting trial by jury is null and void.¹

The Constitutions of all the New England States protect the right of trial by jury, and declare in different forms that this right shall remain inviolate, or sacred, or shall be preserved.

There are, however, many ways in which the legislature may affect and change trial by jury without violating the fundamental right. It may, for instance, enlarge the jurisdiction of a lower court where a jury trial is not allowed, and require an appeal bond to be given by the unsuccessful party, before a jury trial can be obtained in the higher court, in criminal as well as in civil cases;² but not for an unreasonable amount.³

So, likewise, the legislature may repeal a statute which allows a second jury trial as of course.⁴ It may also require a party who desires a jury trial to claim it in court within a certain reasonable time, or lose the right.⁵ The court

may adopt and enforce a rule requiring the defendant in certain classes of cases to file an affidavit of defence, or lose his right to a jury trial.⁶ A statute is constitutional which provides that after a party has been defaulted in court, judgment may be rendered against him without trial by jury.⁷

The right of a trial by jury does not extend to matters of probate. Neither in the Probate Court itself, nor on appeal therefrom, has a party a constitutional right to a jury.⁸ The same is true with respect to suits in the Courts of Chancery, because they proceed according to the civil law and not strictly according to the common law.⁹

Even in common law proceedings, a jury need not in cases involving small amounts consist of twelve men.

Under the Connecticut statutes relating to trials before a justice of the peace for small amounts, a jury may consist of six electors without violating the Constitution.¹⁰ In Vermont, in a suit before a justice of the peace, either party has a right by statute to demand a trial by a jury of six persons.¹¹

In New Hampshire and some other States, the courts have expressed the opinion that under the State Constitution a jury cannot consist of less than twelve men, and that a statute providing for a trial by less than twelve in any

¹ *Parsons v. Armor*, 3 Peters, 413; *Harron v. Baltimore*, 7 Peters, 247; *Welster v. Reid*, 11 Howard, 457; *Edwards v. Elliott*, 21 Wallace, 592; *Walker v. Sarvint*, 92 U. S. 90; *Colt v. Eves*, 12 Conn. 243.

² *Beers v. Beers*, 4 Conn. 535 (1823); *State v. Brennan*, 25 Conn. 278 (1856); *Jones v. Robbins*, 8 Gray, 329 (1837); *Hagood v. Doherty*, 8 Gray, 373.

³ *Greene v. Briggs*, 1 Curtis C. C. 311 (1853).

⁴ *Matthews v. Tripp*, 12 R. L. 356 (1879).

⁵ *Foster v. Morse*, 122 Mass. 354 (1882).

⁶ *Jones v. Spear*, 21 Vt. 420 (1840).

⁷ *Commonwealth v. Whitney*, 108 Mass. 5; *Hunt v. Lucas*, 99 Mass. 401.

⁸ *Weed's appeal*, 35 Conn. 452 (1869);

Piper v. Clark, 18 N. H. 415.

⁹ *Ross v. New Eng. Mut. Ins. Co.*, 120 Mass. 113 (1876); *Charles River Bridge v. Warren Bridge*, 7 Pick. 314, 260 (1829);

Powers v. Raymond, 137 Mass. 483 (1884);

Plimpton v. Somerset, 33 Vt. 283, 290 (1860);

Belloves v. Belloves, 28 N. H. 60.

¹⁰ *Colt v. Eves*, 12 Conn. 243, 252, 253 (1837);

Curtis v. Gil, 31 Conn. 49 (1867);

¹¹ *Vermont Statutes*, 1894, section 1220;

Brown v. Irwin, 21 Vt. 68 (1848).

case where the Constitution gives the party a right to a trial by jury, is unconstitutional and void.¹

While slavery existed, a fugitive slave had no constitutional right to a trial by jury, even in a free State.² But if a slave was brought into a free State by his master or came into such State without having escaped from a State where he owed labor or service, he could not be reclaimed by the master under judicial proceedings, but would be given his liberty on *habeas corpus*.³

In Vermont it has been held that trial by jury is not a constitutional right in actions on book account;⁴ nor in proceedings by trustee process;⁵ nor in the trial of petty offences;⁶ nor in proceedings for laying out highways and assessing damages therefor;⁷ nor, where the issue is tried by the court, has either party a constitutional right to have the damages assessed by a jury.⁸

By statute in Connecticut if the defendant submits to a default in an action for unliquidated damages, the plaintiff has no right to have the damages assessed by a jury, and in practice the damages are uniformly assessed by the court alone.⁹ Upon the assessment by the court, the defendant is allowed to show any matter which has a tendency to reduce the damages to a nominal sum, even contributory negligence on the part of the plaintiff.¹⁰ The result is that in certain classes of cases, particularly for personal injuries, the amounts recovered are very small, and many

of such actions are brought in Massachusetts and other neighboring States, in order to obtain an assessment of damages by a jury.¹¹

This Connecticut practice is a substantial restriction upon the right of trial by jury, and is of doubtful constitutionality. It is not only a hardship upon the citizens of Connecticut, but also places the burden and expense upon other States of trying cases which ought to be properly tried in Connecticut. The practice is an ancient one in that State, and was first introduced by the courts, without the authority of a statute.¹² In the Colony of New Haven, trial by jury was not allowed by law, and perhaps this circumstance explains the present practice. By a general order of Connecticut passed in 1644, the Particular Court, if they conceived that the jury had not proceeded according to the evidence, were authorized to "vary and alter the damages given in by the jury as they should judge most equal and righteous."¹³

The Fifth Amendment to the Constitution of the United States provides that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury," excepting cases in the army and navy.

**Section 56.
Constitutional
Right to
Indictment by
Grand Jury.**

In the Federal Courts this provision constitutes a jurisdictional requirement, which must be strictly regarded and enforced in favor of the liberty of the citizen.¹⁴ Though the insti-

¹ *Opinion of the Justices*, 41 N. H. 550 (1869).

² *Sum's case*, 7 Cushing, 285 (1851);

Prigg v. Pennsylvania, 16 Peters, 539.

³ *Commonwealth v. Aves*, 18 Pick. 193.

⁴ *Commonwealth v. Fitzgerald*, 7 Law Reporter (Mass.) 379.

⁵ *Pimpton v. Somerset*, 33 Vt. 283, 290, 291.

⁶ *Huntington v. Bishop*, 5 Vt. 86.

⁷ *State v. Conlin*, 27 Vt. 318.

⁸ *Gold v. Vt. Central Ry.*, 10 Vt. 478.

⁹ *Brown v. Irwin*, 21 Vt. 68.

¹⁰ Conn. Gen. Statutes, 1888, sect. 1106;

Raymond v. Danbury etc. Ry., 48 Conn. 596, 598.

¹¹ *Daily v. New York etc. Ry.*, 32 Conn. 356;

Cary v. Day, 36 Conn. 152.

¹² *Higgins v. Central N. E. Ry.*, 155 Mass. 176, 182.

¹³ *Swift's System*, II, 268.

¹⁴ *William Hamersley*, in *New England States*, I, 476.

¹⁵ *Ex parte Bain*, 121 U. S. 1.

tution of the grand jury be no longer necessary to protect the individual from the oppression of a monarch, it is still useful and valuable to protect him "from an open and public accusation of crime, and from the trouble, expense and anxiety of a public trial before a probable cause is established," and "against hasty, malicious and oppressive public prosecutions."¹

The Fifth Amendment, however, does not apply to trials in the State courts, and the States have the power to change or abolish the grand jury.²

The constitutional right to indictment by grand jury was thoroughly discussed by Chief Justice Shaw in the judgment of the majority, and by Judge Merriek in a dissenting opinion, in the leading case of *Jones v. Robbins*, 8 Gray, 329, decided in 1857. The Massachusetts statute of 1855, c. 418, authorized a single magistrate to try offences punishable by imprisonment in the State prison, without previous indictment or presentment by a grand jury. Under this act, one Henry Jones was tried and sentenced by the police court of Boston, and then petitioned for a writ of *habeas corpus*. It was held by the Supreme Judicial Court that this statute was contrary to "the law of the land" ordained by the twelfth article of the Massachusetts Declaration of Rights, and that the prisoner was entitled to a discharge, because he had been put out of the protection of the law and deprived of his liberty, without an indictment by a grand jury. "These terms, in this connection," said Chief Justice Shaw, "cannot, we think, be used in their most lax and literal sense to mean the law of the land at the time of trial; because the laws may be shaped and altered by the

legislature from time to time; and such a provision, intended to prohibit the making of any law impairing the ancient rights and liberties of the subject, would under such a construction be nugatory and void. The legislature might simply change the law by statute, and thus remove the landmark and the barrier intended to be set up by this provision in the Bill of Rights. It must therefore have intended the ancient established law and course of legal proceedings, by an adherence to which our ancestors in England before the settlement of this country, and the emigrants themselves and their descendants, had found safety for their personal rights."³

Shortly after this judgment, the legislature repealed the act of 1855 by the act of 1857, c. 157. The doctrine of *Jones v. Robbins* has been affirmed and re-affirmed in later cases.⁴

In 1884, however, the same question came before the Supreme Court of the United States, with respect to the equivalent phrase "due process of law" in the fourteenth amendment; and that court decided that presentment by a grand jury was not essential to due process of law in a prosecution by a State for murder.⁵

The requirement of a unanimous verdict of the jury has occasionally been dispensed with in New England. Governor Winthrop records an instance of this in 1639. One Marmaduke

**Section 57.
Unanimity
of Jury.**

Percy of Salem was indicted for the murder of his apprentice; and at his trial before the Court of Assistants, the jury of life and death could not agree upon a verdict. The case was continued to the next term of court, where further evidence was introduced, apparently

¹ *Shaw, C. J.*, in *Jones v. Robbins*, 8 Gray, 329, 344.

² *Hurtado v. California*, 110 U. S. 516.

³ *Commonwealth v. Hitchings*, 5 Gray, 485.

⁴ *Jones v. Robbins*, 8 Gray, 329, 342, 343.

⁵ *Nolan's case*, 122 Mass. 230 (1877); *Commonwealth v. Hurregan*, 127 Mass. 450 (1879).

⁶ *Hurtado v. California*, 110 U. S. 516.

before the same jury. Ten jurors favored a verdict of acquittal, but two jurors dissented. Finally the two dissenters remained silent, and the verdict of the rest was accepted, and the prisoner discharged.¹

In England, the courts resorted to cruel methods to compel the jury to agree upon a verdict. Jurors were kept "without meat or drink, fire or candle," and were dragged at the cart's tail over the circuit, until they agreed, or the panel was broken by the death of one of the sufferers. In New England, coercive measures were never practised. If the jury reported a disagreement, the court had the power to send them out once or twice for further consideration; but if no agreement was then reached, the court took back the papers and discharged the jury.²

The courts of New England have, however, exerted a "moral suasion" over the minority to induce them to agree with the majority of the jury. In a criminal case tried in Massachusetts, after the jury had been out for several hours, the judge sent for them and instructed them in substance that if any of the jurors differed from a large number of their fellows, such difference of opinion should induce the minority to doubt the correctness of their own judgment, and lead them to a re-examination and closer scrutiny of the facts in the case, for the purpose of revising and reconsidering their preconceived opinions. The jury retired and afterward returned a verdict of guilty. The Supreme Judicial Court decided that such instructions were proper, and no ground for a new trial.³

In Connecticut it was enacted in 1644 that a verdict might be rendered by two-thirds of

the jury, and the same statute declared that the jury might consist of either twelve or six men, as directed by the court. In 1655, it was provided by statute that if the parties to a civil cause agreed thereto in writing before the trial, a verdict concurred in by nine or more of the jury would be valid. Although unanimity is now required in Connecticut, there seems to be no express provision of the Constitution or statute upon the point. In criminal cases, however, a unanimous verdict was early required. By statute of 1672, where the punishment was death or banishment, a unanimous verdict of twelve men was necessary to convict.⁴

Under our present Constitutions, however, a unanimous verdict is necessary to its validity.

In 1859 this question was agitated in New Hampshire, and the House of Representatives requested the opinion of the justices of the Supreme Judicial Court upon it. The justices held the matter under consideration for a year, and then replied that the legislature had no power either to lessen the number of the jury below twelve, nor to authorize a verdict by less than twelve, in any case where the Constitution confers the right of trial by jury.⁵

In the Federal Courts, including all the Territorial Courts, it is now settled that the Seventh Amendment to the United States Constitution requires a unanimous verdict of twelve jurors in all common law cases; and that neither Congress nor a territorial legislature has power to authorize a verdict by a lesser number.⁶ There is no provision in the National Constitution, however, which prevents the States from changing their constitutions or

¹ *Savage's Wintthrop*, I, 384.

² *Swift's System*, II, 259.

³ *Commonwealth v. Tacey*, 8 Cushing, 1 (1851).

⁴ *Jud. Hist. Conn.*, 163 (1895).

⁵ *Opinion of the Justices*, 41 N. H. 550 (1860).

⁶ *American Publishing Co. v. Fisher*, 166 U. S. 464;

Springville v. Thomas, 166 U. S. 707;

Thompson v. Utah, 170 U. S. 343.

laws, and authorizing a verdict by a majority of the jury.

In criminal trials, the requirement of a unanimous verdict is approved by all the leading jurists, judges and lawyers. In civil cases, however, this requirement has been subjected to considerable adverse criticism. That sturdy champion of popular rights, Zephaniah Swift of Connecticut, condemned unanimity as early as 1796, for the reason that "it is in many instances productive of delay, and may give an obstinate juror the power of controlling all the rest."¹

Judge Samuel F. Miller of the Supreme Court of the United States, after an experience of twenty-five years on the bench, expressed the opinion that in civil cases "the system of trial by jury would be much more valuable, much shorn of many of its evils and much more entitled to the confidence of the public as well as of the legal and judicial minds of the country, if some number less than the whole should be authorized to render a verdict." And he added that eight or preferably nine should be allowed to render a verdict.²

With the advance of civilization, questions for the determination of the jury have become very difficult and complex, upon some of which it is unreasonable to expect twelve men to agree. It is no longer a question of merely guilty or not guilty, nor whether the plaintiff or defendant owns a parcel of land, or a certain head of cattle. Even if the jury agrees that the plaintiff is entitled to something, it is often impossible for them to agree upon the amount. In such case at least, a majority of

eight or nine should be allowed to render a verdict.

The process of attainr was practised for a short time in New England: but never with the severe penalties prescribed by the old English law. Not content with depriving the guilty jurors of all civil and social rights, and confiscating all their property and prostrating their houses, the law of England ordered each juror's wife and children to be turned out of his home.³ In New England, the punishment was light in comparison, and the chief purpose was to obtain a new trial before a double jury, having power to revise the verdict of the first jury.

Attainr was authorized by the Massachusetts statute of 1672, and was regulated by the statute of 1684. Before the American Revolution, however, attainrs had become obsolete in New England, as well as in England.⁴

In civil cases, the right and power of the jury to decide questions of law was sometimes recognized and sometimes disallowed in the early laws of Massachusetts colony.⁵

When the practice of granting new trials became settled, this question ceased to be important. If the court considered the verdict contrary to its instructions upon the law, it set aside the verdict, and granted a new trial, and did not render judgment upon it.

On May 11, 1657, the General Court of Massachusetts enacted: "The duty of the jury is, if they do understand the law to the satisfac-

**Section 28.
Attainr the Jury.**

**Section 50.
Jury's Right
and Power
to Decide
the Law.**

¹ Swift's System, II, 259.

² System of Trial by Jury, 21 Am. Law Review, 865 (1887).

³ Shaw, C. J., in Commonwealth v. Anthes, 5 Gray, 185, 202.

⁴ Washburn, 46;

Quincy's Reports, 559, 560.

⁵ Washburn, 45.

Body of Liberties, Nos. 29, 30, 31, 70, 76, 77.

tion of their consciences, not to put it off from themselves, but to find accordingly; but if any of the jury doth rest unsatisfied what is the law in the case, then the whole jury have liberty to present a special verdict; viz.: if the law be so or so in such a point, we find for the plaintiff,—but if the law be otherwise, we find for the defendant;—in which case the determination is left to the Court.”¹

This statute of 1657, however, seems to have been merely declaratory of an existing custom, as appears from Thomas Leckford's book, “*Plain Dealing, or News from New England*,” which was published in 1642, after four years spent in Massachusetts. He says: “Matters of debt, trespass, and upon the case, and equity, yea, and of heresy also, are tried by a jury, which although it may seem indifferent, and the magistrates may judge what is law and what is equal, and some of the chief ministers inform what is heresy, yet the jury may find a general verdict if they please; and seldom is there any special verdict found by them, with deliberate arguments made thereupon, which breeds many inconveniences.”²

In all criminal prosecution, however, the power of the jury to return a general verdict, necessarily draws with it the power to decide the law as well as the facts. If the verdict be “not guilty,” the court has no power to compel the jury to adopt its view of the law, and must discharge the prisoner even if the jury have disregarded the law as stated by the presiding judge. If the verdict be “guilty” the court may set aside the verdict, if satisfied that the jury have disregarded the law as stated by the presiding judge; but another jury may return the same verdict without being liable

to punishment. In either case, therefore, the jury possess the power. Much discussion has taken place as to whether the jury have the “rightful” power to decide the law against the instructions of the court.

For two hundred years after the settlement of New England, the right as well as the power of the jury to determine questions of law involved in the issue at criminal trials, was universally recognized and acted upon by the people, by the legislature and by the courts. The judges admitted it, and in charging the jury, after expressing their own views of the law, they were careful to add that the jury had the right to decide otherwise.

So long as the judges were the instruments of the Crown and would take the side of the Crown against the people, it was essential to the liberty of the subject that the jury should possess the power to decide the law as well as the fact in criminal trials. If the king's judges could decide the law, it was of very little consequence who decided the facts. “History shows by the saddest lessons that there are no facts out of which constructive treason, conspiracies, sedition or libel cannot be made. The only safety of the subject was in the judgment of his peers upon the whole issue.”³

Before the American Revolution “it was undoubtedly believed that in the then condition of things it would be safer for the colonies that the power of determining the law should be vested in the jury than to leave it in the hands of the judges. And even after the Revolution the doctrine seems to have obtained some currency that in all cases, civil as well as criminal, the jury had a right to determine the law as well as the facts.”⁴

¹ Records, IV, part 1, p. 291;

Whitmore's Colonial Laws, p. 91.

² Quoted in Savage's Winthrop, II, 44

³ Thomas, J., in *Commonwealth v. Anthes*, 5 Gray, 183, 291 (1857).

⁴ Walton, J., in *State v. Wright*, 53 Me. 328, 333, citing *Georgia v. Brinsford*, 8 Dallas 4 (1794).

In Connecticut the court did not express any opinion with respect to the law in charging the jury in the first instance; but if a majority of the court were dissatisfied with the verdict as returned, they could send the jury out for further consideration, and before the jury retired, could instruct them in points of law. The want of power to instruct the jury before the verdict, was considered a defect in the judicial system of Connecticut by Judge Swift as early as 1796. The jury were the judges of the law as well as of the facts.¹

This doctrine has been carried so far in Connecticut as to allow the jury to decide the constitutionality of a statute. The question arose upon the liquor law of 1872, which was claimed by the accused to be unconstitutional. In a prior case, the Supreme Court had decided that law to be constitutional. Notwithstanding this decision, the presiding judge submitted the question to the jury, but stated that in his opinion the statute was constitutional, and added: "If you decide that to be unconstitutional which the Supreme Court hold to be constitutional, you will disturb the foundations of law. But after all, you are the judges of the law, and if on your consciences you can say this section is unconstitutional, then you ought to acquit the accused." The jury returned a verdict of guilty, and the Supreme Court held the charge to be correct.²

In 1880, this view was reaffirmed; but an instruction that it would be absurd for the jury to decide a statute to be unconstitutional after the Supreme Court had held it to be constitutional, was deemed no ground for granting a new trial to the accused.³ Connecticut is now

the only State in New England where this rule prevails.

The Supreme Judicial Court of Maine decided in 1841 that in criminal causes the jury are the judges of the law as well as of the facts. "It is doubtless their duty to decide according to law; and as discreet men, they must be aware that the best advice they can get upon this point, is from the court. But if they believe they can be justified in deciding differently, they have a right to take upon themselves that responsibility."⁴

In 1835 the doctrine was first broached in New England that the jury had not the right to decide the law in a criminal case. Judge Story announced this view in *United States v.*

Section 60.
Same Subject;
Modern View.

Battiste, 2 Sumner, 240, in his charge to the jury in the Circuit Court of the United States for the District of Massachusetts. Daniel Webster appeared for the accused and argued the right of the jury to decide the law. In the charge, Judge Story said: "My opinion is, that the jury are no more judges of the law in a capital or other criminal case, upon the plea of not guilty, than they are in every civil case, tried upon the general issue. In each of these cases, their verdict, when general, is necessarily compounded of law and of fact, and includes both. In each, they must necessarily determine the law, as well as the fact. In each, they have the physical power to disregard the law as laid down to them by the court. But I deny, that, in any case, civil or criminal, they have the moral right to decide the law according to their own notions, or pleasure. On the contrary, I hold it the most sacred constitutional right of every party accused of a

¹ Swift's System, II, 259.

² *State v. Hackley*, 40 Conn. 246.

³ *State v. Thomas*, 47 Conn. 546.

⁴ *Weston, C. J.*, in *State v. Snow*, 18 Me. 346, 348. In 1865, however, this case was overruled, and the view adopted that the jury could not decide the law. *State v. Wright*, 53 Me. 328.

crime, that the jury should respond as to the facts, and the court as to the law. It is the duty of the court to instruct the jury as to the law; and it is the duty of the jury to follow the law as it is laid down by the court. This is the right of every citizen; and it is his only protection. If the jury were at liberty to settle the law for themselves, the effect would be not only that the law itself would be most uncertain from the different views which different juries might take of it; but in case of error there would be no remedy or redress by the injured party; for the court would not have any right to review the law as it had been settled by the jury."

In 1843 the Superior Court of Judicature of New Hampshire decided the important case of *Pierce v. The State*, 13 N. H. 536, in which this question was ably discussed by Judge Gilchrist and Chief Justice Parker. The conclusion reached was that "it is inconsistent with the spirit of the Constitution that questions of law, and still less, questions of constitutional law, should be decided by the verdict of the jury, contrary to the instructions of the court." Since this case it has been considered a settled principle of constitutional law in New Hampshire that the court are the judges of the law, and the jury judges of the facts involved in the issue. "The trial by jury established by the Constitution," said Judge Doe in a later case, "is a trial in which the duties of the court and jury are divided in that manner. That was the true meaning of trial by jury at common law (as was held in *Pierce v. State*), and that was the meaning in which the Constitution adopted and guaranteed it. U. S. v. Morris, 1 Curtis, U. C. 23, 55. This point is

so well settled and so well understood that no one would suppose it in the power of the legislature to transfer the duty of finding the facts from the jury to the judge, in any case in which a party has a constitutional right to a trial by jury, and insists upon his right."¹

In Massachusetts, the jury's right to decide the law was conceded as late as 1830.² It was not until 1846 that this right of the jury was denied in Massachusetts. The first case to announce this rule, which has been adhered to ever since, was *Commonwealth v. Porter*, 10 Metcalf, 263, in which the opinion was delivered by Chief Justice Shaw. In the course of his judgment, the chief justice said (page 281): "Whether, therefore, we consider the rules of the common law, or the Constitution and laws of this Commonwealth, we are of opinion that it is the proper province and duty of the court to expound and declare the law, and that it is the proper province and duty of the jury to inquire into the facts by such competent evidence as may be laid before them, according to the rules of law for the investigation of truth, which may be declared to them by the court, and find and ultimately decide on the facts."

In a later case decided in 1857, Chief Justice Shaw considered "the true glory and excellence of the trial by jury" to consist in this: "That the power of deciding fact and law is wisely divided; that the authority to decide questions of law is placed in a body well qualified by a suitable course of training, to decide all questions of law; and another body well qualified for the duty, is charged with deciding all questions of fact, definitively; and whilst each, within its own sphere, performs the

¹ *State v. Hodge*, 59 N. H. 519, 522 (1886). In 1821 it was, however, decided in New Hampshire that the jury

were the judges of the law. *Trial of Davis Farmer*, 68.

² *Commonwealth v. Knapp*, 10 Pick. 477, 486.

duty entrusted to it, such a trial affords the best possible security for a safe administration of justice and the security of public and private rights."¹

When a statute purports to give the jury the rightful power to decide questions of law notwithstanding the instructions of the court to the contrary, a constitutional question arises, which has developed great difference of opinion. In the leading case of *Commonwealth v. Anthes*, 5 Gray, 185, three judges were of the opinion that the statute of 1855, c. 152, purported to confer this power upon the jury, and three judges were of the opinion that it did not; the court being composed of six judges. Chief Justice Shaw and Justices Metcalf, Bigelow and Merriek thought that the legislature could not, without violating the Constitution, empower the jury to determine questions of law involved in the issue on a criminal trial, against the instructions of the court. Justices Thomas and Dewey, on the other hand, held that the legislature did possess this power. The opinions delivered by Chief Justice Shaw and by Mr. Justice Thomas contain exhaustive discussions of the general question, as well as of the constitutional question.

The statute of 1855, c. 152, was incorporated into the General Statutes of 1860 and into the Public Statutes of 1882, and is still in force.² The decision of the majority of the court in *Commonwealth v. Anthes*, that the jury has no rightful power to determine questions of law contrary to the instructions of the court,

has been followed in the later cases, and is now the settled law of the Commonwealth.³

In 1851, the question was decided by Judge Curtis in the trial of Robert Morris under the Fugitive Slave Act of 1850. The defendant's counsel, J. P. Hale and R. H. Dana, jr., contended that this act was unconstitutional, and that the jury had the right to so decide, even if the court charged that the act was constitutional. As one of the prisoner's counsel was beginning to argue the question to the jury, he was stopped by Judge Curtis, and informed that the court would hear him upon that question, but that he could not argue it to the jury. After argument addressed to the court Judge Curtis ruled "that under the Constitution of the United States, juries, in criminal trials, have not the right to decide any question of law; and that if they render a general verdict, their duty and their oath require them to apply to the facts as they may find them, the law given to them by the court."⁴

In Maine and Vermont it has also been held to be unconstitutional for the jury to determine the law for themselves in criminal trials, contrary to the instructions of the court.⁵

Upon all indictments for libel, the right and power of the jury to determine the law as well as the fact, are secured by the Constitution of Maine.⁶ The question of libel or no libel has been held in this State to be a question of law, and not of fact, following the opinion of the twelve judges of England in their answer to the House of Lords; but by virtue

¹ *Commonwealth v. Anthes*, 5 Gray, 185, 198 (1857).

² Mass. General Statutes, c. 172, sect. 15;

³ Mass. Pub. Statutes, c. 214, sect. 17, provides that "the jury shall try, according to established forms and principles of law, all criminal causes committed to them, and, after having received the instructions of the court, shall decide, in their discretion, by a general verdict, both the fact and the law involved in

the issue, or may at their election find a special verdict."

⁴ *Commonwealth v. Marzynski*, 149 Mass. 68 (1899).

⁵ *United States v. Morris*, 1 Curtis, C. C. 23, 63.

⁶ *State v. Wright*, 53 Me. 228, 238 (1865).

⁷ *State v. Burpee*, 65 Vt. 1, 30, 31 (1892).

⁸ Maine Const. art. 1, sect. 4.

of the Maine Constitution, the Supreme Judicial Court has decided that it is the province of the jury to determine the question.¹

It was decided by the Supreme Court of Rhode Island in *Dorr's Trial*, 121, that the jury were not the judges of the law in a criminal case, and this doctrine was affirmed in 1859.²

In Vermont the early doctrine prevailed until 1892, when the Supreme Court held that the jury are not the paramount judges of the law in criminal cases, and overruled a long line of decisions to the contrary.³

The jury cannot be compelled to return a special verdict, and a general verdict does not show whether the jury found it upon the facts or upon the law. A verdict of guilty may be based upon an erroneous view of the law. If the jury adopt an erroneous view of the law in returning a verdict of guilty, the accused has no redress; but if the judge rules erroneously, he may obtain a new trial, or a discharge, by taking the case to a higher court. Under the old system where no appeal was allowed in criminal cases, the theory that the jury had the right to disregard the instructions of the court, operated in favor of the liberty of the individual; because the jury were more apt to acquit than to convict when they disagreed with the judge upon the law. But this consideration has lost much of its force under the modern system, which allows an appeal by the accused, but not by the State.⁴

Moreover in the old system, all important criminal trials took place before the whole court, and it was customary for several judges

to deliver separate charges to the jury, and it sometimes happened that the judges expressed different and inconsistent views of the law. In such cases the duty necessarily devolved upon the jury to decide the law if they returned a general verdict. "It followed as almost a necessary consequence of this course of proceeding, that a verdict must be conclusive. How would it be possible to take exceptions to instructions in point of law, where those instructions were various and perhaps contradictory? Or to object to a verdict for a misdirection, where if the directions given by one judge were incorrect, their influence may have been counteracted by those of another, which were strictly conformable to law?"⁵

Under the present system, the whole court do not sit in jury trials, and only one charge is delivered, and consequently the danger of inconsistency is reduced to a minimum. At any rate, the charge may be made to appear upon the record, and, if incorrect in law, the error may be corrected by a higher court. When the jury errs in law and returns a verdict of guilty, the accused has no redress in a higher court.

The English judges have possessed and freely exercised the power to comment upon the testimony, to call the jury's attention to parts of it, and to express their opinion upon the facts, leaving the ultimate decision of all matters of fact to the determination of the jury. The same practice has prevailed in the Courts of the United States, even when held in States where a different practice

**Section 61.
Charging Jury
on Questions
of Fact.**

¹ *State v. Gould*, 62 Maine, 509 (1871).

² *State v. Smith*, 6 R. L. 33.

³ *State v. Burpee*, 65 Vt. 1 (1892); overruling *State v. Creteau*, 73 Vt. 14 (1849);

State v. Paddock, 24 Vt. 312 (1852);

State v. Barron, 37 Vt. 57 (1864);

State v. Meyer, 38 Vt. 457 (1866);

State v. Freeman, 43 Vt. 406 (1861);

Commonwealth v. Cummings, 3 Cush. 212.

⁵ Shaw, C. J., *Sketch of Chief Justice Parker*, 9 Pick. 569, 570 (1830).

has been in force under statutes or State constitutions. "The powers of the courts of the United States in this respect are not controlled by the Statutes of the State forbidding judges to express any opinion upon the facts."¹

Judge Story in delivering the opinion of the Supreme Court of the United States in an early case, announced the Federal rule, which has been adhered to ever since: "With the charge of the court to the jury, upon mere matters of fact, and with its commentaries upon the weight of evidence, this court has nothing to do. Observations of that nature are understood to be addressed to the jury merely for their consideration, as the ultimate judges of matters of fact, and are entitled to no more weight or importance than the jury, in the exercise of their own judgment, choose to give them. They neither are, nor are they understood to be, binding upon them as the true and conclusive exposition of the evidence."²

In the State Courts, however, the judges are generally prohibited to charge the jury upon the facts, or to express any opinion upon the credibility of witnesses; for the reason that it is considered an invasion of the province of the jury.³

The form of the existing Massachusetts statute indicates that its adoption was the result of a compromise between two opposing forces, which has rendered it difficult to construe. The statute declares that "the courts shall not charge juries with respect to matters of fact, but may state the testimony and the law."

The two branches of this act are somewhat inconsistent; but the purpose of the legislature seems to have been to forbid the judges from charging the jury that, in their opinion, certain facts had been or had not been proved by the evidence or that certain witnesses were worthy of belief; but to allow the judges "to sum up the evidence, to state its legal effect and bearing on the issues, and to indicate its proper application under the rules of law."⁴

As the judge is allowed "to state the testimony," it follows that he may charge the jury that certain circumstances are entitled to great weight, and that other circumstances are of little or no importance.⁵

The early rule in Maine was that the presiding judge had the right to charge the jury on the facts, and that an expression of his opinion upon the facts and the testimony was no ground for granting a new trial.⁶ In 1874, however, this rule was changed by statute, which expressly prohibited the judge from stating his opinion upon issues of fact arising in the case, and made a violation of the statute a cause for a new trial.⁷ Under this statute the presiding judge may state the grounds respectively taken by counsel, and may rule the law as applicable to the hypothetical statements of both sides.⁸ He may also state that certain facts are not controverted, and if the facts are controverted by either party, his counsel must call the matter to the judge's attention before the jury retire, or he will be considered as having waived his right of exception.⁹

¹ Gray, J., in *Vicksburg etc. Ry. v. Putnam*, 118 U. S. 545, 553;

Nudd v. Burrows, 91 U. S. 426;

Lincoln v. Power, 151 U. S. 436.

² *Carver v. Jackson*, 4 Peters, 1, 80 (1830).

³ Mass. General Statutes, c. 115, sect. 5.

Mass. Public Statutes, c. 153, sect. 5.

Conn. General Statutes (1886), sect. 1630;

Maine Revised Statutes (1889), c. 82, sect. 83.

⁴ Bigelow, C. J., in *Commonwealth v. Barry*, 9 Allen, 276, 279 (1864).

⁵ Foster, J., in *Durant v. Burt*, 98 Mass. 161, 168.

See also, *State v. Smith*, 65 Maine, 257.

⁶ *Gilbert v. Woodbury*, 22 Maine, 246 (1843).

Maine Statute 1874, c. 212;

Maine Revised Statutes (1889), c. 82, sect. 83.

⁷ *State v. Beuner*, 64 Maine, 267, 291 (1874).

⁸ *Harvey v. Dodge*, 73 Maine, 316 (1889).

The Judiciary and the Bar of
New England

FOR THE

NINETEENTH CENTURY

BIOGRAPHICAL - CONNECTICUT

THE JUDICIARY AND THE BAR OF NEW ENGLAND.

CONNECTICUT.

ROGER SHERMAN BALDWIN, was born in New Haven, Conn., January 4, 1793. He was the second son of Judge Simson and Rebecca (Sherman) Baldwin. His mother was the daughter of Roger Sherman, a signer of the Declaration of Independence. Roger S. Baldwin was graduated from Yale College in 1811, and was admitted to the bar in 1814. From that time until his death, February 19, 1863, he was ardently devoted to his beloved profession, excepting during the period when he was called into public office.

As a lawyer he was esteemed for his high sense of professional honor and integrity, his powerful use of language in presenting his case, and his skill in argument. He was an earnest and fearless Abolitionist and labored on many occasions, and successfully, for the liberation of slaves. He was a member of the New Haven Common Council, in 1826 and in 1837-38 served in the State Senate. In 1840 and 1841 he was elected to the General Assembly and in 1844 was chosen to the high office of governor of the State. He was re-elected in 1845, and from 1847 to 1851 was in the United States Senate. He would have been elected for the full term, ending in 1857, had it not been for the defection of a few pro-slavery Whigs who did not like Governor Baldwin's strong anti-slavery sentiments. In

the Senate he took a conspicuous part in the discussion upon the subject of the admission of California into the Union. He also received high commendation for his caustic speech in



ROGER S. BALDWIN.

reply to Mr. Mason, of Virginia, who had cast reflection upon the motives of Connecticut in reserving a portion of the western domain.

Governor Baldwin was an earnest and influential Federalist and Whig until the Republican party was formed in 1856, when he

joined its ranks and labored in its interest during the remainder of his life. He was an early and trusted commander in the organization of the new party which elected Abraham Lincoln. Governor Baldwin was presidential elector in 1860, and in the winter of 1861 was appointed by Governor Buckingham a member of the celebrated Peace Congress.

SIMEON EBEN BALDWIN, judge of the Supreme Court of the State of Connecticut, was born in New Haven, Conn., February 5, 1810, and is a son of Roger Sherman and Emily Perkins Baldwin. He was graduated from Yale College in 1831 and studied his profession in Yale and Harvard Law Schools. He was admitted to the bar at New Haven in 1863, was in 1869 appointed instructor of law in the Law School in New Haven, and in 1872 was made professor of constitutional law in that institution, a position which he still holds. In the same year he was appointed a member of the State Commission to revise the laws relating to education, and in 1873 upon a commission to revise the general statutes of the State of Connecticut. In 1885 he was made a member of a commission to revise the State system of taxation and revenue. He was for many years attorney for the New York and New England Railroad Company, and for other important roads, bringing him into extensive practice in connection with railroad affairs. He was counsel in the case of the Electric Railroad Signal Company vs. the Hull Railroad Signal Company, 114 U. S., 87, involving the origin of automatic electric signaling; also in *Russell vs. Post*, 138 U. S., 425, as to the liability of wreckers of insurance companies. He also argued the case of the Boston and Providence Railroad vs. the New York and New England Railroad before the Rhode Island Supreme Court, and the case of *Smith vs. Visitors of Phillips Academy* before the Supreme Court of Massachusetts. Judge Baldwin's professional life in all of its phases

has been marked with exceptional success and opportunities for the exercise of his powers in unusually important cases.

As a writer upon legal and kindred subjects Judge Baldwin has been prolific, and the emanations from his pen have met with extended favor. His articles have appeared in the *American Law Register*, *American Law Review*, *Columbia Law Jurist*, the *New Englander* and other publications. He has also contributed articles to the *Transactions of the*



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American Bar Association and the *Academy of Political Science*. In 1871 he published a digest of the cases decided up to that date in the Supreme Court of Connecticut, and followed it with a second volume in 1882. In 1898 he published a volume entitled "*Modern Political Institutions*." From 1884 to 1896 he was president of the New Haven Colony Historical Society, and in 1890 was elected president of the American Bar Association. In 1891 Harvard University conferred upon him the degree of LL.D. In 1893 he was elected a member of the Supreme Court of Errors, and in 1897 was appointed to the presidency of the American Social Science Association.

Judge Baldwin was married October 19, 1865, to Susan Winchester, of Boston, daughter of Edmund and Harriet (Wears) Winchester. They have two children: Roger Sherman Baldwin and Helen Harriet, wife of Dr. Warren R. Gilman, of Worcester, Mass.

CHARLES B. ANDREWS, chief justice of the Connecticut Supreme Court and one of the distinguished jurists of New England, was born on November 4, 1834, in Sunderland, Mass., and graduated from Amherst College in 1858. He began practicing his profession in Litchfield, Conn., and soon acquired an excellent business. He served in 1868-9 in the State Senate and in 1878 in the House of Representatives of Connecticut, acting as chair-



CHARLES B. ANDREWS.

man of the judiciary committee. He had at that time acquired a very strong hold upon popular favor throughout his adopted State, as a consequence of which he, in 1878, received the nomination for governor by the Republicans, against Gov. Richard D. Hubbard, and was elected. His administration of this high office was all that his most ardent admirers anticipated and still further strengthened his

position with the people of the State. In 1882 he received additional honor through appointment to the position of judge of the Superior Court of Connecticut, from which he was elevated in 1889 to the chief justiceship of the Supreme Court.

Judge Andrews is a man of unimpeachable character, with temperament and disposition of marked gentleness, and unflinching courtesy in his intercourse with others. His knowledge of law is extensive and accurate, and the qualities of his mind give him pre-eminent fitness for his high office.

RALPH ISAAC SINGERSSOLL.—Among the most distinguished members of the Connecticut bar and who rose to distinction in the councils of the Democratic party, was Ralph Isaacs Ingersoll. He was a native of New Haven, Conn., born February 8, 1789, and died August 26, 1872. He was a member of a family many of whom attained eminence in the legal profession in past years. His father was Jonathan Ingersoll, whose death took place in New Haven, January 12, 1823, at the age of seventy-six years. He has been described as not only a lawyer of superior ability, but as "one of the purest statesmen Connecticut has ever seen." He was born in Ridgefield, Conn., and graduated from Yale College in 1766. He practiced many years in New Haven, and enjoyed the esteem and friendship of a wide circle of professional brethren. He became prominent in public affairs before middle life; was many years in the General Assembly, and was appointed judge of the Superior Court and of the Supreme Court for the Correction of Errors. He was once elected to the National Congress, but declined to accept the position. In the latter years of his life he became a leader in the Toleration movement and in 1817 was elected by that party lieutenant-governor of the State upon the ticket with Oliver Wolcott. Judge Ingersoll held this office after the adoption of the present constitution until his death.

Another prominent lawyer of this family was Jared Ingersoll, uncle of the just mentioned Jonathan Ingersoll. He was born in Milford, Conn., in 1722, graduated from Yale in 1742 and soon afterward began practice in New Haven. Endowed with wonderful power of eloquence, a frank and attractive personality, and profound knowledge of the principles of law, he soon acquired an extended reputation and a large business. In 1757 he was sent to Great Britain as agent of the Colony, and again in 1764 he visited England, where he received appointment as stamp-master. However excellent were his motives in accepting this office, and they were never doubted, party feeling on this side ran so high that he received little credit in the Colony and he gladly retired from the position. In 1770 he was appointed by the Crown judge of the Vice-Admiralty Court in the Middle District of the Colonies. His duties then took him to Philadelphia. After the office was abolished he returned to New Haven, where he died in 1781. His son, Jared Ingersoll (Yale College, 1766), was admitted to the Connecticut bar, but removing to Philadelphia, became a distinguished leader of that bar, with several notable lawyers among his descendants in that city.

A junior brother of Ralph I. Ingersoll was Charles A. Ingersoll, for many years a prominent practitioner at the bar of New Haven and at the time of his death, judge of the United States District Court.

Ralph I. Ingersoll graduated from Yale College in 1808, and in 1810 opened a law office in New Haven. From that time forward for many years he was a leader in his profession. A graceful and effective speaker, with a clear and vigorous intellect, and thorough knowledge of the law, he was able to win an enviable measure of success. When his father, as before stated, joined the Toleration party in 1817, the son joined in the movement. This party in process of time and after the second election of President Jackson, became the Democratic party in this State, and Mr. Ingersoll was one of its trusted and most efficient leaders.

For several years he represented New Haven in the Assembly and was speaker of the House in 1824. From 1825 to 1833 he was a member of congress, when he resigned, and in 1835 was offered the senatorship from this State, but declined. During his congressional term he became an intimate friend of James K. Polk, and when the latter was elected president he appointed Mr. Ingersoll minister to Russia, where he remained two years. He then gladly returned to the practice of his profession, dying in 1872.

CHARLES ROBERTS INGERSOLL is the son of Ralph Isaacs and Margaret (Vandenhuevel) Ingersoll, and was born in New Haven, Conn., on September 16, 1821. He



CHARLES S. INGERSOLL.

began the acquirement of his education in the Hopkins Grammar School in his native city and finished in Yale College, from which he was graduated with honor in 1840. He soon afterward entered Yale Law School and in 1845 was admitted to the bar of New Haven county. From that time to the present, a period of more than half a century, he has continued in active practice of his profession, though frequently call-

ed to fill public positions of honor and responsibility. In 1856-58, in 1866 and in 1871 he represented New Haven in the General Assembly, and in 1873 was elected governor of the State of Connecticut. The general satisfaction with his administration and his large personal following and popularity brought him a re-election in 1874 and also in 1875 and 1876. At the succeeding election he declined renomination. In 1876 he was a Democratic presidential elector from this State. In all the relations of life, public and private, Governor Rogersoll has maintained the high standard set by his ancestry. His public record is clear and his administration of the honorable office to which he has been called has been marked by efficiency, good judgment of public affairs, and loyalty to the best interests of the Commonwealth. Governor Rogersoll still follows the profession which he has so long adorned.

JOHN CLARK HOLLISTER was born at Manchester, Vt., June 2, 1818, and is descended from Lieutenant John Hollister, who settled in Wethersfield, Conn., about 1642. His grandfather was Elijah S. Hollister, a native of Massachusetts, born about 1763. He enlisted in a Massachusetts regiment and later in the New York regiment at Fort Plain, commanded by the brave Col. Marinus Willett, which was stationed at Schenectady. This regiment won distinction in the border wars of the Revolution, and when in later years Mr. Hollister had a son, he bestowed upon him the name of the gallant Colonel Willett. After the close of the war he settled in Vermont, and at the time of his death was sheriff of Bennington county. He died at the age of about fifty years, leaving nine children; one child died in infancy. Other members of the family also fought in the Revolution. A brother of Elijah S. was named Jesse, who served under General La Fayette, and it is believed he was also at one period on the staff of General Washington. Upon the occasion of

La Fayette's last visit to this country in 1824-25 he called upon Capt. Jesse Hollister and renewed their old acquaintance.

Marinus Willett Hollister, father of the subject, was a farmer during his life and one of those hardy, earnest citizens of the Green Mountain State who aided in subduing the wilderness and in planting the institutions of civilization. His wife was Hannah Barton; they had three children: John Clark, the eldest, a daughter Martha, and Edgar Barton Hollister.



JOHN C. HOLLISTER.

John Clark Hollister enjoyed somewhat exceptional opportunities for obtaining an education. During the period including his early life he attended the Burr Seminary in Manchester, Vt., entering in the first term of its existence. This was a noted educational institution in past years, and the principal for a considerable period was an old tutor in Yale College, which fact had an influence upon the choice of that college by young Hollister for the completion of his studies. He entered Yale in 1837 as a sophomore and was graduated in 1840. He had already resolved to adopt the profession of law and had studied to that end, previous to entering the Yale Law

School in 1841, with the well-known firm of Bates & Huntington, in Northampton, Mass. In 1842 he was admitted to the bar, of which he has been an honored member nearly sixty years.

Mr. Hollister has been a lifelong Whig and Republican. During many of the early years of his practice, after he had settled in New Haven, he served as a grand juror. He was for one year clerk of the Senate of Connecticut. Upon the death of Thomas Bennett, the justice selected for the trial of civil and criminal causes in Justice's Court, which took place about 1848, Mr. Hollister was chosen to fill the vacancy. At the end of the term in the following year he was a candidate for the office. The Democrats were determined to accomplish his defeat, but on the eve of the election Mr. Hollister's friends substituted his name at the head of a large number of Democratic tickets and he received a good majority of the votes. But Mr. Hollister has not at any time in his life been an office seeker. He has found his full share of satisfaction and contentment in the quiet practice of his profession and the consciousness of the respect and confidence of not only his brethren at the bar, but of the many whose important interests have been confided to his care.

Mr. Hollister had an honorable connection with the State militia, entering the ranks before the Civil war period and subsequently receiving promotion to captain of the old National Blues. While filling this post he was chosen adjutant-general of the State and served in that position during 1854-5.

Mr. Hollister was one of the founders of St. Paul's Episcopal church of New Haven in 1845, and has ever since held a very prominent position in this society. He was the first clerk, was vestryman from 1845 to 1857, and clerk during the same period. He was collector from 1864 to 1876 and treasurer during the same period; was chosen junior warden in 1853, served two years, and since 1855, a period of more than forty years, he has been senior warden.

Since the organization of the New Haven Police Court, when Mr. Hollister's office as trial justice passed out of legal existence, he has seldom appeared in any of the courts excepting the Probate Court. In the latter he has been quite largely employed, and if a testimonial to his high character, integrity, and professional ability were wanting, it is found in the great number of estates and property interests that have been placed in his care during the last twenty-five years.

Mr. Hollister has been twice married, first to Martha L. Bralley, of New Haven, February 17, 1841; she was born March 6, 1821, and died March 5, 1849. Second, to Sarah S. Shipman, October 31, 1850. She was born January 21, 1821, and died December 3, 1898. He has had six children, three of whom were by his first wife; three are now living.

LIVINGSTON WARNER CLEAVE-
LAND, judge of the Probate Court for the District of New Haven, was born in South Egremont, Mass., January 31, 1860, son of Rev. James Bradford Cleaveland and Elizabeth H. (Jocelyn) Cleaveland. His father, whose death occurred May 21, 1889, was a well known Connecticut Congregational clergyman. His mother is a poetess, her poem "No Sets in Heaven" having been widely read in this country and in England. His maternal grandfather, Nathaniel Jocelyn, was a noted portrait painter, an engraver and founder of the National Bank Note Engraving Company. Referring to Mr. Jocelyn's death, which occurred at his home in New Haven in 1881, the New York Journal of Commerce said: "Fifty years ago the name of Jocelyn was better known on the face of a bank note than the name of the bank itself. His portraits were among the cleverest works of the kind produced in the country. He was the founder of the most celebrated of the bank note companies, and was a leader of the highest style of art for more than two generations." In

1844 Mr. Jocelyn won the gold palette as a prize for the best picture by a Connecticut artist. He was a cordial sympathizer with the slave, and his house was one of the "stations of the Underground Railway."

The earliest known Cleaveland to migrate to this country was Moses Cleaveland, who came to Woburn, Mass., from England, in the seventeenth century, from whom Judge Cleaveland is directly descended. He is also a descendant of at least five Mayflower Pilgrims, being a lineal descendant on his father's side of Governor Bradford, and on his mother's side of John Howland and Elizabeth Tilley and her parents, all of whom were passengers on the Mayflower. On the paternal side he is related by common ancestry to three presidents: John Adams, John Quincy Adams and Grover Cleveland, and to one Connecticut governor, Gov. Channucey F. Cleaveland. On the maternal side he is related by common ancestry to the illustrious Trumbull family, which gave Connecticut three governors, among them the celebrated war governor, Washington's "Brother Jonathan."

Judge Cleaveland was graduated with the degree of LL.B. from the law department of Yale College in 1881, and in 1888 received the degree of M. L. from Yale University. He was admitted to the bar in New Haven in 1881, and was engaged in the general practice of law until his election to the bench. He is, and for a number of years has been, the only commissioner of deeds for all the States and Territories and the principal Canadian Provinces in New England, outside of Boston. In politics he is a Republican. He served as a member of the Common Council in 1891 and again in 1892. In 1891 he was elected by the Board of Councilmen as a member of the Board of Finance for the city. In 1894 he was nominated by the Republican Probate Convention as judge of probate for the District of New Haven, a district comprising the city and six adjoining towns, the most important probate district in the State. In this Democratic stronghold he was elected by over one thousand

plurality. His popular competitor had held the office for eight years, carrying the previous election by about five thousand majority. Judge Cleaveland is still judge of probate, having been re-elected in 1896 by a majority of between three and four thousand, and again re-elected in 1898, being the only Republican on the ticket who carried the city of New Haven, the average Democratic plurality in the city for the State ticket being about a thousand.



LIVINGSTON W. CLEAVELAND.

He is a member of the Massachusetts Society of Mayflower Descendants, was one of the supreme committee on laws of the Improved Order Heptasophs in 1894-96, and has been for many years a member of the New Haven Young Men's Republican Club. He was elected in June, 1899, president of the New Haven Congregational Club for the year 1899-1900, has been for about ten years one of the directors of the local Young Men's Christian Association, is also a member of the executive committee of the State Association, and has been superintendent of English Hall Sunday School since 1889. He is unmarried.

WILLIAM HENRY ELY, a descendant of Nathan Ely, one of the first settlers of Hartford, and son of William Brewster Ely and Elizabeth Smith Morgan, his wife, was born in Hartford, November 27, 1856. He is descended also from Elder William Brewster, through his father's grandmother, Drucilla Brewster. On the maternal side he is descended from the Morgans of Stonington,



WILLIAM H. ELY.

who were conspicuous in the war of the Revolution; also from Thomas Seymour, who was king's attorney before the Revolution, and from the Chevenards, a Huguenot family.

Mr. Ely was graduated from the Hartford High School in 1873, at the age of sixteen years. Entering Amherst College he was graduated with the class of 1877, and at once took up the study of law in the office of Briscoe & Malby, of Hartford. He was admitted to the bar in that city on May 27, 1879. He began the practice of his profession in Winsted, Conn., in September, 1879, and continued there until June 28, 1884, when he settled permanently in New Haven. His business connection since that time has been with William C. Case, and at the present time is with the firm of Case, Ely & Case.

Mr. Ely is a Republican and has made his influence felt in the local affairs of that party. In January, 1895, he was elected corporation counsel of New Haven, and was re-elected in 1897 for two years. His administration of that office has been eminently satisfactory to the community.

Mr. Ely is a member of the Quinmipic Club, the Sons of the American Revolution, the Republican League, and the Young Men's Republican Club of New Haven.

Mr. Ely was married October 18, 1881, to Mary Gertrude Little, of Sheffield, Mass., daughter of Lucius and Loretta (Holmes) Little. They have one son, William Brewster Ely, born October 19, 1882.

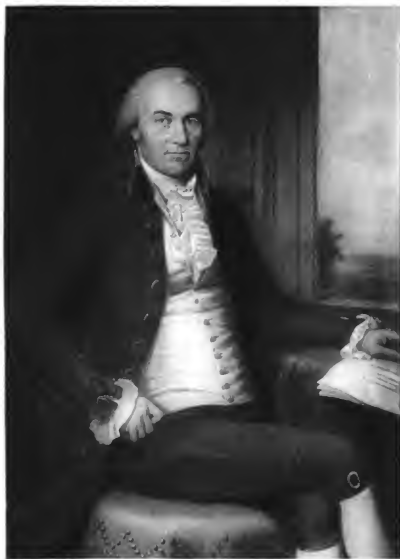
WILLIAM KNEELAND TOWNSEND, of New Haven, judge of the United States District Court, is descended from a family of great antiquity in Norfolk county, England. He was born in New Haven, June 12, 1849. His educational as well as social opportunities were all that could be desired. Entering Yale University he graduated with honor in 1871 and entered the Yale Law School in 1872. There he carried off both the Jewell and the Civil Law composition prizes, graduating in 1874, second in his class. After a European trip he began the practice of the profession in his native city in association with Hon. Simon E. Baldwin, and in 1876 entered the graduate class in the Law School, taking the degree of M. L. in 1878, and of D. C. L. in 1880. In the years 1879-80 he served as a member of the city Common Council and in 1880 was elected alderman from the First ward. In 1881 he published a work entitled "The New Connecticut Civil Officer," the merit of which was sufficient to cause it to be adopted by the State of Connecticut. In the practice of his profession during the comparatively short period preceding his elevation to higher duties, he won his way rapidly towards the front rank.





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He made the interests of his clients his first consideration, devoted to their cases the best powers of his keen and well trained intellect, and made them his enduring friends by the native magnetism of his personal manner. In 1886 he became a partner of George D. Watrous, and the firm was counsel for the New York, New Haven and Hartford railroad and for various other corporations, in which capacity affairs of great importance came into their care. In June, 1861, Judge Townsend was appointed professor of pleading in Yale Law school, and as Edward J. Phelps professor of contracts he is still a popular and

University and the Boone and Crockett clubs of New York.

On July 1, 1874, Judge Townsend was married to Mary Leavenworth Trowbridge, of New Haven, daughter of Winston J. and Mary (Leavenworth) Trowbridge. They have had three children: Winston Trowbridge, born June 10, 1878; Mary Leavenworth, born December 6, 1879; and George Henry, born July 22, 1884, the two younger of whom are living. Winston Townsend died May 2, 1898.



WILLIAM K. TOWNSEND.

efficient member of the faculty. In 1889 he was elected corporation counsel of the city of New Haven.

In 1892, after about seventeen years of active practice, during which much important litigation came to his hands, he received appointment to his present office of judge of the United States District Court. Here his work during the past seven years has met with high commendation from the profession.

Judge Townsend is a member of the Republican League, of the Graduates and University clubs of New Haven, and of the Century, the

OLIVER ELLSWORTH was born April 29, 1745, at Windsor, Connecticut, being the son of David Ellsworth and Jemima Lenvitt and great-grandson of Josiah Ellsworth, who died in Windsor in 1689. Oliver Ellsworth's home was always in Windsor, and he went to Yale college in 1762 but soon left for Princeton, graduating from the latter college with high honors in 1766. He then took up the study of theology under the Rev. Dr. Bellamy of Bethlehem, Connecticut, but at the advice of the distinguished divine he took up the study of law. This was owing to a remarkably logical essay which Oliver Ellsworth handed to his instructor to criticize. In 1771 Oliver Ellsworth was admitted to the Hartford county bar, and although living in Windsor, he practiced law in Hartford and attended to farming at his own home.

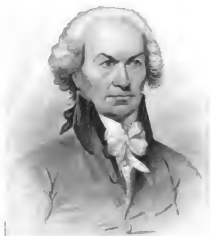
In 1775, having shown his ability as a lawyer, he received the appointment of State's attorney for Connecticut and soon after was elected as a representative to the general assembly, and was also appointed as delegate to the continental congress in 1777.

In the difficult process of framing the constitution of the United States, Oliver Ellsworth was, it has been often stated, the most influential of all those who had to do with that remarkable instrument. It was only through his wise and timely suggestions that an agreement was finally made between the larger and smaller states in the matter of representation in congress; and after long and wearisome de-

bates, each side being firm and even stubborn, Ellsworth suggested that representation in the lower house should be in proportion to the population, which pleased the larger states, and that equal representation should be in the senate. This was adopted.

Oliver Ellsworth's most prominent work was the judiciary act, which stands unchanged to-day, and the Supreme Court of the United States is a monument to his memory as well as the inferior United States courts. This act was passed while he was in the United States senate.

In 1784-1785 Oliver Ellsworth was a judge



OLIVER ELLSWORTH

of the Supreme Court in his own State, and doubtless it was from this position he was called to the senate.

As he has been called by John Adams, "the finest pillar of the whole of Washington's administration," it may be added that Washington personally desired Ellsworth to succeed him as president of the United States. Mr. Calhoun also, in a speech made by him in the senate, pays him this tribute years after: "Who are the men of the States to whom we are indebted for this admirable government? I will name them; their names ought to be engraven on brass and live forever. They are

Chief Justice Ellsworth, Roger Sherman, and Judge Patterson," etc.

From 1796 to 1800 he served as chief justice of the Supreme Court of the United States, and was in 1799 appointed as minister plenipotentiary to make a treaty of peace with France. Although in feeble health and enduring a hard passage, Ellsworth secured a treaty most satisfactory to the United States and received every mark of honor and distinction both in England and France.

While abroad Ellsworth resigned as chief justice, as his health was poor. Upon his return home he accepted again the position of judge of the Supreme Court of his own State and held this position until the day of his death, November 26, 1807.

Oliver Ellsworth was of a deep religious character, and his acts in the various positions in his most active life prove this. A personal friend of George Washington and admired by all who came in contact with him, whether on the bench as judge of the Supreme Court or as minister in a foreign country. His opinions when once fixed were not shaken, and even Napoleon said when he saw Ellsworth in Paris: "Who is that man? We will have to grant him whatever he demands regarding the treaty."

WILLIAM WOLCOTT ELLSWORTH, governor of Connecticut, 1838-42, judge of the Superior Court and of the Supreme Court of Errors, 1847-61, was a conspicuous figure in state civil and judicial history for many years. Moreover, he was one of the most distinguished lights of the legal profession in this State, and his splendid life and attainments are yet among the cherished memories of the other members of the State bar. On the occasion of his death his eulogist, the late William R. Cone, truthfully voiced the sentiment of the entire bar when he said Judge Ellsworth's "honesty was of perfect whiteness;" and not a whit less sincere was the still earlier public utterance of Rufus

Choate in describing Judge Ellsworth as a man of "hereditary capacity, purity, learning and love of the law." And still further the eminent Choate said: "If the land of the Shermans and Griswolds and Duggetts and Williamses, rich as she is in learning and virtue, has a sounder lawyer, a more upright magistrate, or an honest man in her public service, I do not know his name."

As the chief magistrate of this his native State, he devoted himself to her interests and the advancement of the education of her people with that ardor and inflexible purpose which characterized him in every undertaking. As a judge he brought to the bench, as he did to the bar, great purity and uprightness of character, learning, love of profession, industry, high integrity of mind and heart, and that habit of patient and impartial investigation which made him distinguished as a lawyer and most acceptable as a judge—"a man whom the State delighted to honor, and in honoring whom she honored herself." As a Christian gentleman he was characterized by simplicity of manner and dignity of person, and by an earnest love of the truth and the doctrines of the Bible. (Resolutions of Hartford bar, adopted January 16, 1868).

Judge Ellsworth was born in Windsor, Hartford county, November 10, 1791, and was the third son of Oliver Ellsworth, the latter the second chief justice of the United States Supreme Court. He was educated in the public schools of his native town; was prepared for college and in 1806 he entered Yale college, graduating in 1810. His early legal education was acquired in the famous Litchfield Law school under the tutorship of Judges Tapping Reeve and James Gould, and also in the office of Thomas Scott Williams (afterward Chief Justice Williams of the Supreme Court). He was admitted to practice in 1813 and soon afterward began his professional career in Hartford.

At the bar of the courts in Hartford county Judge Ellsworth early won a standing of prominence, for even then he seemed to have

inherited many of the personal traits of his distinguished father. Personal independence and self-reliance were his native characteristics, added to which was a thorough understanding of the law, the result of careful study. Circumstances also contributed to his success in early life, for on the election of Judge Williams to congress, Judge Ellsworth, who was his partner, succeeded to the large and profitable practice of the firm, and he conducted the business almost unaided for two years. Thereafter for a period of sixteen years he was engaged in active practice and gained a wide reputation for ability at the bar of the courts.



WILLIAM W. ELLSWORTH.

Naturally, a man of his mark could not well avoid being drawn somewhat into the arena of politics, although much against his personal inclination. In 1827 Judge Ellsworth was elected to congress, served five years and then declined a re-nomination. In the house during the entire time he was on the judiciary committee, and his ablest forensic efforts were in behalf of the American tariff and the pension bills. In 1834 he returned to his practice and after a brief respite of four years he again was pressed into the political service of his party, the whig, though against his wish, for the governorship of Connecticut. He was

elected, and was continued in office four years. During this period he was urged to accept an election to the senate of the United States, but in this he successfully withstood the demands of his party. However, in 1847 he was elected by the legislature to a seat on the bench of the Superior Court and the Supreme Court of Errors, and served as an associate judge of the latter court until 1861, when, having attained his seventieth year, he retired from the bench. In the later years of his life his voice and sentiments were the guidance of the republican party, especially during the dark years of the civil war, for he was one of the ablest and the noblest supporters of the cause for which Mr. Lincoln contended. Judge Ellsworth died January 15, 1868.

WILLIAM L. STORRS, chief justice of the Supreme Court of Connecticut from February 9, 1857, to the time of his death, June 25, 1861, was one of the most honorable and honored representatives of the law in the history of the State, a man of commanding intellect, high legal attainments and great judicial ability; a man of the old distinctive Connecticut type, a native of the State, a descendant of good New England stock.

Judge Storrs was born in Middletown, March 25, 1795, and was educated in the public schools of his native town, and in Yale college, graduating with honors in 1814. He fitted himself for the law, was admitted to practice and began his long professional career in Middletown, where he soon established a reputation for capacity, integrity and high moral worth. In less than ten years he was the leader of the Middlesex county bar, hence naturally was early called into public life. In 1827-29 he represented his town in the assembly, and again in 1834; when in the house for a fourth time he was its speaker and the most distinguished member of that body. In 1829 he was elected to congress and was re-elected in 1831, serving at that time four years. In 1839 he again was in the house of representa-

tives in Washington, and while serving in that capacity he was elected to the bench of the Supreme Court of this State.

Judge Storrs was appointed to the bench in May, 1840, and served as one of the associate justices until February 9, 1857, when he was elevated to the chief justiceship. His career as a magistrate covered a period of more than twenty years, and it is doubtful whether in the history of the judiciary in the State there ever has been a magistrate who commanded such absolute confidence, respect and esteem as he. His conscientiousness was almost proverbial, his opinions were models of judicial reasoning. Indeed, his dominant characteristics were wise discrimination, logical reasoning, unquestioned honesty and firm determination. His life was an honor to his county and to the State, and his death was a loss to the legal profession, the bench and to the people of Connecticut.

"Of the general character of the late chief justice," said his eulogist, Mr. Denning, "of his keen insight into the hidden depths of human motives, of his Johnsonian power and sententiousness in exposing a sophism and refuting a fallacy, of his dry and sarcastic humor, of his familiarity with the English classics, of his acute sensibilities, and of his social graces. I need not speak to those who have enjoyed his society in his rare intervals of relaxation. It was not, however, these accomplishments, nor his native power, nor his logical grasp, nor his acquisitions, nor his professional training, that finally established upon such a solid basis his reputation as an accomplished judge, respected and beloved by all who practiced in his court. We may place in that vacant and mournful chair a greater natural intellect, learning more profound, sharper and more finished discipline; and yet the throne of the chief justice will not be filled."

JESSE ROOT, associate justice of the Supreme Court from 1789 to 1798, chief justice from 1798 to 1807, and who brought to that office a profound understanding of the





law, was originally educated for the ministry, and after several years of clerical life he abandoned it for the law.

Judge Root was graduated at Princeton college in 1756, and in 1763 he was admitted to practice law. Having cast his fortunes with the legal profession, he practiced until the outbreak of the American revolution. In 1777 he joined the Continental army under General Washington at Peckskill, and was given a commission as lieutenant-colonel. In 1778 he was a delegate to the Continental congress at Philadelphia, and served in that capacity four years. In 1789 he was appointed



JESSE ROOT.

to the bench of the Superior Court, serving as associate justice until 1798, and as chief justice from that year until 1807.

While acting as associate justice, Judge Root added to his regular duties that of reporting cases, and his essay on the common law of Connecticut, which appears as a preface to the first volume of his reports, is the first work of his kind in the State.

Recollections of Judge Root are very meagre, and no present practicing lawyer in this State has more than traditional remembrance of his active professional life. His reports indicate a thorough knowledge of the law, are clearly

and carefully written, and reflect in a way the life he led previous to his change from the ministry to the profession of law.

THOMAS BELDEN BUTLER, chief judge of the Supreme Court of Errors from May, 1870, to May, 1873, when he resigned on account of impaired health, was born in Wethersfield, August 22, 1806, and died in Norwalk, June 8, 1873. His parents were Frederick and Mary (Belden) Butler, both of whom were well known in literary circles, his father having been the author of several works, notably a "Compendium of History," which attracted favorable attention and comment early in the nineteenth century.

Judge Butler was educated under his father's immediate supervision, and for the profession of medicine. He was a student in the medical department of Yale college and afterward in a similar institution in Philadelphia, where he completed his course and was licensed to practice. He began professional life in Norwalk, where his work was reasonably successful, but at the end of eight years he abandoned the practice, being impelled to that action by reason of his own highly nervous temperament and sensitiveness that could not bear the sufferings of patients. He then turned to the law, for which by nature and inclination he was better fitted, and in this step he was guided more by his own desires than the parental preference. He read law with Judge Clark Bissel and came to the bar of Fairfield county in 1837. He at once began practice, was remarkably successful and soon attained a standing of prominence in the ranks of the profession. His first law partner was Thaddeus Betts, upon whose death while senator in congress, Judge Butler succeeded to the large and profitable practice of the firm. His second partner was Orrin S. Ferry, then recently admitted to the bar, and who afterward was elected to the United States senate. His third and last partner was Josiah M. Carter, with

whom he was associated when elected to the bench of the Superior Court.

Judge Butler was elevated to the bench of the Superior Court in May, 1855, and afterward was a judicial officer until a few weeks before his death, when by reason of failing health he resigned his seat. As a lawyer he is remembered as possessing sterling qualities of mind, a careful studious nature and the rare faculty of quickly and accurately determining doubtful questions of law. He had not a strong physique, yet he was a constant worker, and when in later years the cares of judicial office, with the responsibilities of the chief justiceship were wearing away his strength, he bore his sufferings with remarkable patience. In 1861 he was elevated to the bench of the Supreme Court of Errors, and was made its chief judge May 13, 1870. His subsequent career on the bench was marked with an ability that showed the perfect judicial mind in an enfeebled frame, but never was he known to utter complaint. As a physician he could not bear the sufferings of those whom he was called to attend, but he himself was a patient, uncomplaining sufferer. At length, however, he resigned (May, 1873) and laid down the cares of office for rest and quiet. He lived only a few weeks and died in June of the same year.

Judge Butler's biographer, in analyzing his personal characteristics, said: "His common sense perceptions were quick and positive, and he saw clearly the real justice of a case. His only fault in this relation was a tendency in an unusual degree to speculative views. His mind was in the highest degree philosophical and never found more congenial occupation than when engaged in unhampered speculation on some philosophical subject, more especially of a physical nature." Commenting further, the same writer says he was absolutely free from ostentation or pretention, and that there was nothing he held in more utter contempt. He also was a plain man, in manners, habits and dress and always held familiar intercourse with his professional associates. He enjoyed the humorous side of things, and

although not given to story-telling, he had a rich fund of anecdotes tending to illustrate some eccentricity of human character which on occasion he told very effectively.

Although Judge Butler was a life-long attendant at the services of the Congregational church, he did not have an actual membership therein until a short time before his death. He had often given serious thought to religious subjects, but always postponed definite action until late in life. He was received into church membership and partook of the Lord's supper on June 2, 1873, and six days afterward he died.

DAVID DAGGETT, chief justice of the Superior Court of Connecticut in 1832-4, associate justice of the same court from 1826 to 1832, senator in congress six years, and for forty-five years a conspicuous figure in public life, was born in Attleborough, Massachusetts, December 31, 1761, and died in New Haven April 12, 1851, in the eighty-eighth year of his life. He was a descendant in the fifth generation of Job Daggett, a Puritan, who came to America in 1630 with Winthrop's company and settled in Watertown, in the Massachusetts colony.

Judge Daggett's father was Thomas Daggett, a man of sterling integrity and strong religious tendencies that were manifest in his daily walk, and the son himself was a deep thinker on all religious questions during his active life. It is evident that Thomas Daggett was able to provide his son with an excellent early education, for at the age of sixteen years he entered the junior class in Yale college; and he was graduated, with honors, in 1783. A few years later, when the college conferred on him the master's degree, he delivered an oration that attracted widespread attention, and was ordered published—an unusual proceeding and a mark of special honor. He received the honorary degree of LL. D. in 1826.

Having determined to enter the legal profession, Judge Daggett took up the study of

law with Charles Chauncey, of New Haven, and in 1786 he was admitted to practice. During the period of his law reading, he maintained himself by performing the duties of butler in the college and also by teaching in the Hopkins Grammar school; and soon after he came to the bar he was offered a tutorship in the college, but declined it in favor of the profession he had determined to follow. He came into active life soon after the close of the revolution, at a time when the States of the union were re-organizing in accordance with the new condition of political affairs, and when men of capacity and understanding were in demand in the halls of legislation. Whether Judge Daggett was ambitious to enter politics none of his biographers inform us, and while he struck out earnestly into the depths of legal practice he soon was drawn into the political field; and for a period of forty-five years he was a prominent figure in public life, advancing step by step from the lower house of the legislature to the United States senate and to the chief justiceship of the Superior Court of his State. But throughout this long period of public service Judge Daggett maintained a constant relation with the bar and was never out of practice until appointed to the bench. With him political life was a duty, not a diversion or means of livelihood, and the law was his mainstay and support, his shield and buckler. However, let us glance briefly at this eminent lawyer in his public career, and then at his personal characteristics as an upright citizen, for he was both in the highest and fullest sense.

Judge Daggett represented New Haven in the lower house of the general assembly from 1791 until 1797, and was its speaker after 1794. He was elected to the senate in 1797, and retained his seat in that body until 1804, when he resigned. In 1805 he was returned to the house, and in 1809 was again in the senate, serving four years, until 1813, when he was elected to a seat in the United States senate, and for the next six years was a factor in national politics. He was a federalist,

and a leader of an influential minority in congress, while in his own State he undoubtedly guided and controlled the policy of his party. He was no tyrant, jealous and watchful of his power, but a natural leader who swayed public opinion with logic and learning, with mighty individual strength.

In 1811 Judge Daggett was appointed State's attorney, but resigned the office when he was chosen to the senate. Returning from the national capital in 1819, he resumed law practice, which in a measure he was forced to neglect while in congress, and thereafter for some years he stood at the head of the Connecticut bar—a tower of strength in the legal profession. For him it was a fortunate interruption in his public career, as he was enabled to recuperate his personal estate and provide for the future. In 1824 he was made an associate instructor in the law school, and in 1826 was appointed Kent professor of law in Yale Law school, holding both positions long after he had retired from public life. In May, 1826, he was chosen associate justice of the Superior Court, and was advanced to the chief justice's chair in 1832. On December 31, 1834, having attained his seventieth year, he was retired from the bench, yet for many years afterward he was engaged in practice. In 1828 and 1829 Judge Daggett was mayor of New Haven.

In the annals of the old New Haven bar Judge Daggett always has been referred to as the veritable legal giant. Although dignified in manner he was without vanity and altogether above it. He rarely blundered, always frankly acknowledged an error, and never intentionally committed a wrong action. As an orator he displayed masterly ability, had an inexhaustible fund of humor, abounded in anecdote, and his wit and pathos at times were inimitable. His mind was receptive and retentive, far above trivial things, yet firm in its grasp upon that which was good. His knowledge of the scriptures was amazing, and its finest passages were frequently interwoven in his arguments and addresses. He always

had lived an upright life, and in his later years he accepted the fulness of Christianity and died a Christian.

ISAAC TOUCEY unquestionably was one of the most distinguished and also one of the ablest representatives of the legal profession in this State who attained a position of commanding importance in public life. He came to the bar in Hartford in 1818, and from that time until his election to congress in 1835 he was best known as a lawyer in active practice, although during that period he served thirteen years as State's attorney for Hartford county, having held that office from 1822 to 1835.

Mr. Toucey first became a figure in national political history in 1835, when he was sent to congress. He was a member of the house, and one of the strongest debaters on the democratic side, four years. He was not returned at the end of his second term, and for the next ten years he was one of the leaders of the bar in this State. In 1846 he was elected governor of Connecticut and served one year. During the latter part of Mr. Polk's administration he was United States attorney-general and the president's chief legal advisor. In 1850 he was in the senate of this State, and in the next year was elected by the Connecticut legislature to a seat in the senate of the United States.

Mr. Toucey served in the upper house of congress one term of six years and was regarded as one of the ablest members of that body. As senator he was brought into association with the leading statesmen of the country, both democrats and whigs, and while he was not the recognized leader on his own side he nevertheless occupied a position of importance in the councils of his party in Washington. In 1857, on Mr. Buchanan's accession to the presidency, he was called to the cabinet and given the portfolio of the navy department.

At the close of the Buchanan administration Governor Toucey returned to his home in Hartford and, to a limited extent, he resumed law practice. His long public service, with

its vicissitudes and responsibilities, had a telling effect upon his physical strength, and while he practiced in an advisory capacity he was virtually retired from active professional work. He surely had earned rest and quiet after thirty years of arduous practice and more than twenty years of public service, yet he was offered and declined a seat on the bench of the Supreme Court of the United States.

Judge William D. Shipman, one of Governor Toucey's biographers, in writing of the latter's characteristics and professional worth, said: "He justly ranked among the ablest lawyers in the State. He was thorough and



ISAAC TOUCEY.

indefatigable in the preparation and trial of his causes. His manner was imposing but somewhat cold and formal, but his courage was undimmed and his perseverance unflinching. He never gave up the cause of his client until every resource which the law furnished had been exhausted. He was a very accurate lawyer, learned and exact in pleading, and clear and orderly in the presentation of his case. He was tall in person, and though of slender figure, he had fine features and a commanding presence. He spoke slowly and with great precision. His diction was strong and clear,

but without a particle of ornament." In his private character Mr. Toucey was without blemish. "He was a consistent and devout member of the Episcopal church. He was an eminently just man. In his own convictions he was as firm as a granite rock, and he held to them with a strength and tenacity of will that were unsurpassed. His administration of the navy department during the last of Mr. Buchanan's administration has often been severely criticised, but it may be said with entire truth, of which there exists ample and conclusive proof, that these criticisms were without foundation."

Isaac Toucey was born in Newtown, November 5, 1796, and died in Hartford, July 30, 1869. He came to the bar in 1818, and in the same year began the practice of law in Hartford.

ORIGEN STORES SEYMOUR, chief justice of the Supreme Court of Connecticut from 1873 to February, 1874, the worthy successor in that high judicial office of Thomas Belden Butler, was born in Litchfield, February 9, 1804, and died in that town August 12, 1881. His father, Ozias Seymour, was for many years sheriff of Litchfield county, and his grandfather, Mayor Moses Seymour, was an officer and patriot of the revolution. Indeed, this branch of the Seymour family included several men of distinction in public life, among whom may be mentioned Governor Horatio Seymour, of New York, and Senator Horatio Seymour, of Vermont. Another branch of the family were among the pioneers in southern New York, and also included several men of more than ordinary prominence.

Judge Seymour was well educated before he came into public life, and he graduated at Yale college, with honors, in 1824. While in college, however, his eyes were seriously affected and he was compelled to learn his lessons by having them read by his class mates; but despite this affliction he was proficient as a student and stood well up in his class.

Leaving college he studied law in his native town and came to the bar in Litchfield county in 1826. He at once entered into active life and soon took a position in the front rank of the profession, becoming the leader of the bar in his own county, controlling an extensive practice and enjoying a State-wide reputation as a man of learning and high character. He became known in Hartford through his frequent appearance there in the higher courts, and also as a legislator in its assembly, in which he often represented his town, and in 1850 was chosen speaker of the house. In 1851 he was elected to congress and was re-elected in 1853. Two years later (1855) on the reorganization of the courts of this State he was one of the four new judges elected by the general assembly to the bench of the Superior Court. His term expired in 1863, at a time when the relations between the existing political parties were somewhat strained and when the republicans, the dominant party of the State, could not yield one jot of consideration to their opponents on account of the divided sentiment growing out of the civil war. Therefore, in that year the republican majority in the legislature refused to recognize Judge Seymour's right to a re-election and chose his successor from its own following.

This implies that Judge Seymour was a democrat whose political sentiments were not fully in accord with Mr. Lincoln's war policy, yet such was hardly the case. It is true, however, that both he and his colleague upon the bench—Judge Waldo—were democrats, but neither was allied to the radical, bitter element of the party, and neither ever showed hostility to the war policy of the party in power.

At the expiration of his term of office Judge Seymour resumed law practice in partnership with his son, Edward W. Seymour (his first law partner was George C. Woodruff), the firm standing at the head of the Litchfield bar. But he was not long to live in private life, as his great usefulness on the bench in earlier years made his services again necessary. But

before his re-election was accomplished he twice stood (1864 and 1865) as the democratic candidate for the governorship; and while he was as frequently beaten at the polls it was not that his popularity was less but rather that at the time the soldier vote was cast solidly for the republican nominee.

In 1870, however, the republican legislature made reparation for any injustice it may have done in former years by electing Judge Seymour to the bench of the Supreme Court by an almost unanimous vote. In 1873, upon the death of Chief Justice Butler, he was chosen to the vacant seat and thereafter served with great ability and unswerving fidelity until he attained his seventieth year. He then retired and afterward was almost constantly engaged in trying causes in the capacity of referee. In 1876 he was made chairman of the commission selected to settle the long disputed boundary question with New York, and he also was presiding officer of the commission chosen about the same time to prepare the new code of practice which the legislature approved and adopted in 1879; and it was largely through his known influence and professional worth that the bar of the State accepted the code as a useful auxiliary of practice.

Judge Seymour died in 1881 in the town in which he was born and in which he always lived. His loss was felt not only in Litchfield but throughout Connecticut, especially in the capital city, where he was regarded as the father of the law. On the occasion of his death the Hartford bar at a public meeting highly eulogized his sterling qualities, the remark of governor Hubbard having been especially appropriate: "He seemed to me to possess in a marked degree what we are accustomed to call the judicial conscience. His moral sense was keen and discriminating, and he had a quick scent for the discovery of fraud, falsehood and oppression in the entanglements of a cause. He was made up for a great chancellor. Such an office he would have filled to its full and made it illustrious with the noble ethics of equity law carried home to the business of men."

Again, in speaking of Judge Seymour's work as a member of the code commission, the orator said: "You would have said in advance that he was the last lawyer in the State to rebel against an old hereditary bondage of the law. But he said and felt, what some of our best lawyers have found so difficult to see and feel—that the law has remained for centuries a dead and cowardly conservatism, rusted and crusted all over with what Burke calls 'the awful hoar of innumerable ages.' How bold and courageous he was for reform, and yet how careful, discrete and wise, let our new system of civil procedure testify. By this work, more than all else he has done, he has left his mark on the jurisprudence of the State."

ZEPHANIAH SWIFT, chief justice of the Supreme Court from 1815 to 1819, one of the most valuable contributors to the early literature of the law in Connecticut, and, withal, one of the most profound legists in New England in his time, was graduated from Yale college in 1778, and about two years later began the practice of law in Windham county; but he evidently was more devoted as a student and analyst of the law than as a practitioner, and was eminently qualified for the judicial position he filled so long and honorably. In 1793 and again in 1795, he was elected to congress, and when in 1800 Chief Justice Oliver Ellsworth was sent on his diplomatic mission to France, Mr. Swift accompanied him as secretary. Immediately on his return, in 1801, he was appointed to a seat on the bench of the Supreme Court of Connecticut, serving as associate justice until 1815, and as chief justice from the year last mentioned to 1819, when he retired.

While in congress Judge Swift wrote and published his "System of the Laws of Connecticut," in two volumes, a work altogether unique and one that attracted attention throughout New England. In 1810 he issued the "Digest of the Laws of Evidence in Civil and Criminal Cases, and a Treatise on Bills

of Exchange and Promissory Notes," a somewhat comprehensive work in its scope, diffusive in the subjects treated, yet a recognized authority in law. In 1822 and 1823 he published a "Digest of the Laws of Connecticut," also in two volumes, a valuable and reliable reference work, and one which in form and arrangement of subject matter was used as a model for later publications. The "Digest" was Judge Swift's last contribution to the literature of the profession.

TAPPING REEVE, chief justice of the Superior Court in 1814 and 1815, and associate judge of the same court from 1798 to 1815, son of Rev. Abner Reeve, was born in Southold, Long Island, in October, 1774, and died in Litchfield, December 13, 1823. He was educated for the law and was graduated at the College of New Jersey, afterward remaining as a tutor in that institution four years. In 1784 he founded a law school in Litchfield, the first institution of its kind in the country, and one in which many of the foremost lawyers of the State in later years acquired their early legal training. The head of the school was himself a lawyer of profound learning, and had he been ambitious, or an aspirant for public office, the highest political honors awaited him. As it was, he devoted his energies almost wholly to the success of his school and placed it upon a secure basis before he took his seat on the bench of the Superior Court.

Judge Reeve conducted the law school as sole principal until 1798, when James Gould, LL. D., became associated in its management, the founder, however, maintaining his connection with the institution until 1820.

In 1798 Judge Reeve was appointed to a seat on the bench of the Superior Court, and in 1807 was elevated to an associate judgeship in the Supreme Court. In 1814 he was made chief justice and held that office until the next year. He then returned to his work in the law school, and incidentally to the practice of law in Litchfield. After 1820 he lived in comparative retirement until his death.

HENRY DUTTON, judge of the Supreme Court of Connecticut from May, 1861, to February, 1866—the courteous, active magistrate whose career upon the bench was characterized with impartiality, intelligence and such marked ability that he ranked among the ablest jurists of the State—was a native of Watertown, Connecticut, born February 12, 1796, and died in New Haven, April 26, 1869. He was the son of a farmer and his opportunities to acquire a good early education were quite limited; but he was in a great measure self-taught, and by constant application to his books, aided by a naturally bright mind and a determined will, he fitted himself for college without either an academic or preparatory course of study. He himself laid the foundation for his scholastic education, and he builded deep and wide, and in later years he attained a distinction in his profession that placed him among the true legists of his State, for he, indeed, was skilled in the science of the law.

Judge Dutton was graduated at Yale college in 1818, and was awarded special honors for proficient scholarship. Although he then was fitted for practice his circumstances suggested the propriety of temporarily teaching school as a means of replenishing his purse, and while so employed he read law under the instruction of Roger Minott Sherman, of Fairfield. He also was for two years a tutor in Yale college, but in 1823 he laid aside the master's books and opened a law office in Newtown, where in the course of a few years he became the associate and co-temporary—and the peer—of such lights in the profession as Hawley and Booth and Sherman and Betts—names famous in the annals of the bar in this State.

In 1837 Judge Dutton removed from Newtown to Bridgeport, where he was brought into new associations, where his practice took a wider range and where he found full scope for all his remarkable powers. Naturally enough he entered politics and repeatedly was chosen to office, representing Bridgeport in the assembly several terms, and also serving as

State's attorney for Fairfield county. But notwithstanding the success that crowned his efforts in professional and political life in Bridgeport, he left that city in the course of ten years and took up a permanent residence in New Haven. In 1847 he was called to the Kent professorship of law in Yale Law school and soon afterward removed from Bridgeport. In connection with his law school work he continued practice and served one year as judge of the County Court. He also prepared and published a revised edition of Swift's digest, and assisted in the revision of the

codes; that he possessed an extensive and accurate knowledge of adjudged cases, wonderful readiness in their application, great quickness of legal perception, fertility of resource, and a happy audacity in assisting and maintaining new lines of legal thought which made a formidable antagonist. To his practical sagacity while in the legislature was largely due that fundamental change in the law of evidence that permitted parties in interest to testify—a law afterward adopted in other States and in which Connecticut was the pioneer and Judge Dutton the originator.



HENRY DUTTON.

statutes in 1849, 1854 and 1866. In 1854 he was elected governor of the State by the legislature, the people having failed to affect a choice at the preceding spring election.

In May, 1861, Judge Dutton was elected to succeed William Wolcott Ellsworth on the bench of the Supreme Court, and he served with that body until February 12, 1866, then having nearly reached his seventieth year of life. Leaving the bench he resumed practice, but chiefly devoted himself to lecture and instruction work in the law school.

One of his biographers says Judge Dutton's mind was one vast storehouse of legal princi-

WILLIAM HUNGERFORD, an honored member of the old Hartford bar, whose distinguished prominence was achieved wholly within the practice of his profession and was not partially attributable to political preferment, was born in East Haddam, November 22, 1788, and died in Hartford January 15, 1873.

No more fitting tribute to the worth and character of Mr. Hungerford can be expressed than that contained in the following extracts from the resolutions of the Hartford bar, which were adopted at a largely attended meeting held on the day following his death: "Mindful as we are of that eminent success to which he attained by his own industry and integrity, we would—while regretting that his career is ended—point with pride to a life well spent in the labors of our profession. The high position which he occupied for so many years at this bar, and the public confidence and respect which he secured, and which became stronger and greater as his life grew longer, are signal and animating proofs to those who come after him that thorough legal investigation, severe application to business, and blameless purity, are virtues sure of their reward and worthy the emulation of all."

"Resolved, That we shall ever cherish the memory of our deceased brother for his intimate and thorough knowledge of the science

of the law; his untiring devotion to its practice; his sound and reliable judgment; his uniform kindness and courtesy to his brethren; his conscientious regard for truth and justice, and for his spotless professional example during a long life, thereby elevating the character of the profession, and making for him the reputation he richly deserved, of being a model lawyer and an honest man."

From William R. Cone's eulogy delivered on the occasion mentioned, it is learned that Mr. Hungerford was graduated at Yale college in 1809 and afterward spent a few months in

first volume of the Connecticut reports had been published, and they contained not more than three or four cases upon the subject of insurance. The whole law upon insurance has been established and settled since that time, and he had the chief agency in discussing and settling those principles." Indeed, as he matured in professional strength and knowledge, he came to be regarded as an encyclopedia of the law, and his opinion was the opinion of the highest court, lacking only the judicial authority.

The late Governor Hubbard in analyzing the life and professional character of Mr. Hungerford, used the words: "He was, I think, the most learned lawyer at the bar of this State. In saying this I do not forget Sherman and Baldwin, and Ingersoll and Perkins, and such as they. I doubt, if, as a legal scholar, the bar of America had his superior. As an advocate he had few of the graces of the orator. His manner, though not awkward, was not graceful. His temperament was not magnetic, his mind not imaginative or brilliant, and he rarely rose into eloquence. His voice was somewhat harsh and untrained. His style was not free from certain unnumbered, and he sometimes smothered a little, his argument, as it seemed to me, with an excess of readings and citations. But in spite of all this, he was eminently successful, both to the court and to the jury; to the court, of course, because he was a profound lawyer, and to the jury because, though not a brilliant advocate, he possessed a vigorous common sense which pierced to the marrow of a question and an honesty which was transparent. In a word, 'he was, within the range of his friendship—a range, to be sure, somewhat limited—one of the most gentle, simple-hearted and brotherly of men, a man of almost womanly innocence and purity of life. I have never known but one man who I think exceeded him in these qualities. He, too, was a lawyer. It was that rarest of men, the late Governor Seymour."

Mr. Hungerford had no inclination for politics, and refused even a seat upon the bench of



WILLIAM HUNGERFORD.

teaching. He began the study of law in Lyme, with Matthew and Roger Griswold, and was admitted to practice in 1812. He located for practice in East Haddam, his native town, where he remained until 1829, then removing to Hartford. In East Haddam his clients were few, and he supported himself chiefly by trying cases in Justice Court; but while he found abundant leisure he was by no means idle, as every hour was given to constant, patient study, and when he came to the Hartford bar he ranked among the most learned lawyers of his time. "When he came to Hartford," says Mr. Cone's address, "the

the Superior and Supreme Court. In East Haddam he represented the town several times in the general assembly, and likewise represented Hartford after his removal to that city. He was a member of the constitutional convention of 1818, and is believed to have been the last survivor of that distinguished body of men. In political affiliation he originally was a federalist, later a whig and finally a republican.

CHARLES HAWLEY, the famed special pleader of the old Fairfield county bar, and withal one of the ablest trial lawyers of the State in his time, lieutenant-governor of Connecticut from 1838 to 1842, was born in the town of Huntington (now Monroe), June 15, 1792, and died in Stamford February 27, 1866, having passed his entire life in his native county, except the brief occasion when he was called away on professional errands or when serving as a public official. He was purely a domestic man, loving first his home and family, then his profession, and having the least regard for public honors. He was the provident head of a worthy family and left to his children an untarnished record of probity and integrity, as well as a handsome fortune. In his early professional life he knew something of the hardships and struggles which beset the pathway of young lawyers; yet he, more fortunate than many others of his time, was chosen judge of probate for the Stamford district and held that office from 1824 to 1838, acquiring therefrom the means of support while preparing himself for the great legal struggles of his subsequent career.

Governor Hawley—he was thus known after his election to the vice-governorship—was given the advantages of a good early education, and in Yale college, where he was graduated with honors in 1813, he was remarkably proficient in his studies. He was a natural student, an easy learner and one for whom the hardest classes had no terrors. So it was in later years in the field of actual legal contest,

for he still retained his habits of study, absorbing readily all that he read, and in the trial courts he feared no antagonist, however formidable. His adversaries often were surprised by his learning, his logic and his abundantly mental resources, and were not infrequently amazed at his native power and ability to convince. Before the jury he addressed himself to the understanding of his hearers instead of appealing to their passions. He was fruitful in resource, yet never would resort to trick or expedient at the sacrifice of principle.

Governor Hawley acquired his early legal education at Newton, where he was a law student in the office of Asa Chapman, and also in Litchfield in Judge Gould's law school. He came to the bar in 1815, and in the next year began practice in Stamford. At first his success was quite indifferent, and he soon was persuaded that East Haddam offered better inducements to a young lawyer. He made the change, but after a brief residence in East Haddam he returned to Stamford, where he at length achieved greatness in the ranks of the profession; and his honors were won fairly and well, and wholly through his own industry and personal effort. He had little inclination for politics and no love whatever for it. He represented Stamford several times in the lower house of the assembly and the twelfth district twice or three times in the senate, but this he looked upon as a duty, and to that intent only it was a pleasure to him. From 1838 to 1842 he was lieutenant-governor of the State, and while he was a capable public officer, earnest and faithful to every duty, in his heart he vastly preferred the pursuits of professional life and the quiet and congenial surroundings of home.

As remembered by older members of the bar, Mr. Hawley was a man of large and commanding physique, uniformly dignified and gentlemanly in manner, courteous always to his antagonist and properly deferential to the court. He was upright in every walk in life, a regular attendant at church service, but was not directly identified with any church.

THOMAS SCOTT WILLIAMS, of whom it is said that "his mind seemed to work by a law of its own, so that even without the control of his high moral qualities it could hardly have gone astray," was an associate justice of the Supreme Court from 1829 to 1834, and chief justice from December 30, 1834, to 1847, then retiring from the bench on attaining his seventieth year. He was born in Wethersfield, June 26, 1777, and died in Hartford, December 15, 1861, aged eighty-four years. His father was Ezekiel Williams, for many years high sheriff of Hartford county.



THOMAS S. WILLIAMS.

Judge Williams must have been an apt pupil in his earlier years for he was graduated at Yale college in 1794. He then became a student in Judge Tapping Reeve's law school at Litchfield, and afterward continued his studies with Judge Zephaniah Swift, then a practicing lawyer of Windham county. In 1799 he was admitted to practice and began professional work. In 1803 he removed to Hartford and afterward, for fifty-eight years, he was a conspicuous figure in legal and social circles in the capital city.

As a justice of the Supreme Court, Judge Williams possessed a vigorous and comprehen-

sive mind. His perfect integrity and his intrepid assertions of his views of right commanded the confidence of the community and the determinations of his intellect were regarded as almost infallible. He seemed to have an intuitive perception of the merits of a case and of the legal principles it involved. He united modesty and quietness of manner with the utmost firmness. His walk in every day life was correct, and he was a liberal supporter of all worthy causes. For many years he was a member of the American board of foreign missions and of the American Bible society, and at the time of his death he was president of the American Tract society of New York.

Moreover, Judge Williams was an active figure in State politics; was a member of the lower house of the general assembly in 1815 and 1816, 1819, 1825, 1827 and 1829; was representative in congress from 1817 to 1819. In 1829 he was appointed associate judge of the Supreme Court, and in 1834 was made its chief justice.

CHARLES CHAPMAN, the most brilliant advocate of the Connecticut bar, the shrewdest criminal lawyer in New England, and without one of the ablest general legal practitioners in the same region, began his professional career in New Haven soon after he came to the bar, and removed thence to Hartford in 1832. He does not appear to have been specially conspicuous in public life, although he was an ardent whig, representing his party, and Hartford, several terms in the legislature, in congress in 1851, and serving as United States attorney for the district of Connecticut from 1841 to 1844.

Politics, however, was an incidental indulgence on his part, and while his record in public office was entirely commendable, his especial strength lay in the practice of the law, in the civil as well as the criminal courts, and he was a veritable legal giant, with no superiors and hardly an equal. Indeed, he was the embodiment of legal strength, and combined

in his mental architecture all the varied elements of the successful lawyer. No complex situation dismayed him, no antagonist overawed him, no case baffled his power of comprehension and no contumacious or untruthful witness escaped him or his terribly searching cross-examination. Did the occasion demand it, his sarcasm was bitter, yet he was the soul of honor with a candid witness, and courteous always with his professional antagonist, especially when dealing his severest blows. He strode into every intellectual contest armed *cap-a-pie*, he struck no foul blow, and



CHARLES CHAPMAN.

victor or vanquished was still a knight, without fear and without reproach.

As a criminal lawyer Mr. Chapman enjoyed a more than Statewide reputation, and during the period of his practice he was called to the defense in some of the most noted criminal trials ever brought before the courts in this State. His success in cases of this character was as marked, but not more so, as those in the civil courts, yet he never deserved to be classed as a criminal lawyer. With him it was a question of professional duty rather than personal choice, but under whatever standard he waged legal warfare he always was the same

determined foe-man, asking no quarter, yielding none, but never turning victory into ruthless slaughter of his opponents.

As a lawyer, according to his biographer, Mr. Chapman's resources were inexhaustible, and as an advocate before the jury his power was marvelous. His wit was keen, his pathos admirable, and in readiness of retort he was a master. His delivery was natural and not studied, and he seemed always unconscious of his own strength. In Governor Hubbard's analysis of Mr. Chapman's character we find these words: "In professional attainments purely scientific he was, I think, excelled by some of his brethren. His taste did not run largely into the field of dry science or technical law. But in natural parts, in the ready command of all his resources, in strategic skill, and in the graces of oratory, he had, as I think, no equal at the bar. In that kind of labor and research which precedes the trial of a case and which we call preparation, he was excelled by many of his brethren, but when the hour of trial came and the harness was to be put on, he addressed himself to the work with a will and with a marvelous intuition."

Charles Chapman was born in Newtown, Connecticut, June 21, 1799, and died in Hartford, August 7, 1869. He was the son of Asa Chapman, a judge of the Supreme Court of this State from 1818 to 1825. Of the early life and schooling of the son little is now known, but his legal education was acquired under the instruction of his father, also in the office of Chief Justice Thomas Scott Williams, and in the Litchfield Law school. His professional career was begun in New Haven, where he practiced several years, removing thence to Hartford in 1832.

THOMAS CLAPI' PERKINS, the leader of the Hartford bar and for many years previous to his death one of the pre-eminent lawyers of Connecticut, was a native of Hartford, born July 29, 1798, and died in that city

October 11, 1870, in his seventy-third year. His father was Enoch Perkins, a lawyer of prominence in Hartford, and his mother was a daughter of Rev. Timothy Pitkin of Farmington. On both sides he was descended from good old New England ancestors. His early education was acquired in the Hartford Grammar school, and in Yale college, where he was graduated in 1818, the salutatorian of his class. He then read law with Seth P. Staples, of New Haven, and came to the bar in Hartford in 1820.

From the time he entered the ranks of the profession to the close of his long, successful career, Mr. Perkins devoted his attention closely to the practice of law, and in that special field of action alone he achieved eminence, without the aid of public office as a stepping-stone to greatness. It is true that he was occasionally called to political station, but never of his own volition, and always against his personal inclination. Twice he represented Hartford in the general assembly, and twice he was appointed State's attorney for Hartford county, serving in the latter capacity from 1840 to 1842, and again from 1844 to 1846. He also for a few years was United States attorney for the district of Connecticut. Upon the death of Chief Justice William Lucius Storrs he was elected associate judge of the Supreme Court, by an almost unanimous vote of the legislature, but he declined the office.

Mr. Perkins was well schooled for professional life. His studies were pursued chiefly with Mr. Staples in New Haven, yet his own father, himself a good lawyer, was a guiding force in slapping him for the law. The father and son were not associated in practice and the latter always depended on his own mental resources for success. For a time, however, he practiced in partnership with Isaac Perkins, who, while of the same surname, was not a relative.

In October, 1870, on the announcement in court of Mr. Perkins' death, Judge Shipman delivered an address appropriate to the occasion, and in the course of his remarks he said:

"It is well, brethren of the bar, to pause here at the threshold of his grave and for a moment consider those qualities which made him an eminent and useful lawyer, commanding the respect of his profession and the public for nearly half a century and down to his death. We are all aware that there are persons of intelligence who put no very high estimate upon our profession, and who seem to think that its uninterrupted pursuit tends to narrow the intellect and harden the heart. We think and we know that this judgment is unfounded; we have seen it constantly refuted in the lives of



THOMAS C. PERKINS.

great lawyers by displays of intellectual power as comprehensive, and by personal worth as rich and pure as the records of any profession can present. On the roll of such example which this Commonwealth has to offer is inscribed the name of Thomas C. Perkins.

"We all know how steadily Mr. Perkins devoted himself to the business of his profession. From the inception of his cases to their final determination, through all the stages of consultation and preparation for trial, his labors were thorough and constant. As an associate he shirked no share of the burden. To the preliminary details, which must be

investigated and settled in the office by patient industry, he devoted his energies as cheerfully as to the part to be performed in the presence of the court and the public. In this particular he was, while the acknowledged leader of the bar, as considerate of his juniors as he was in former years of his equals.

"But he was not a mere plodder, with no resources except what result from accumulating precedents from the books. He possessed an intellect of great native acuteness and rigor. His perceptions were quick and his mind seized with readiness and wielded with strength the materials which his case and the law afforded. Both as a counselor and an advocate the bar has long conceded his ability. His intellect was strong and active, but not showy. In his addresses to the court or jury he was neither graphic, pathetic nor witty. He displayed no brilliant rhetoric nor stately declamation. He was not a formal, rigid logician, following step by step through long argument the process of exact deduction. But he saw every feature of the case in mind, the nature and bearing of every fact and principle, and shed light upon every part by full, learned, discriminating and luminous discussion.

"He was courteous and respectful not only to the court but to his brethren at the bar, and he almost invariably maintained this bearing even in the fiercest professional struggles. He was a good judge of character and saw the weak as well as the strong traits in others. He expressed himself freely in estimating others, but there was no caustic in his criticisms. He shot no personal arrows. Indeed the whole tendency of his mind and heart was to look on the bright side of all things.

"Though Mr. Perkins' time and talents were mainly concentrated on his profession, it is well known that he was a man of thought and culture in other departments of knowledge. He was well acquainted with the best productions of wit and genius, and in the house of relaxation solaced and refreshed his mind with the treasures of literature. He was eminently fitted to discharge the practical duties of pub-

lic life. The few offices he held were not the most distinguished, and they sought him, and not he them. He honored them rather than they him. But it is not in political circles, or legislative bodies, or popular assemblies that his loss is most deeply felt. It is in the courts, in the midst of the bar, and on the hearthstone of home that the shadow of his death is fallen."

TRUMAN SMITH, whose professional and public life was a part of the political history of two States, was a native of Roxbury, Connecticut, born November 27, 1791, a descendant of a family whose surname was prominent in the early history of the bar of this State. He was graduated at Yale college in 1815 and prepared himself for the law in Litchfield, where he was admitted to practice in 1818.



TRUMAN SMITH.

Mr. Smith began his professional career in Litchfield and soon attained a standing of prominence in the courts, for he was a lawyer of universal ability, both in the trial of his cases and as an advocate. He was an active factor, too, in public politics, and for three years (1831, 1832 and 1834) he represented

Litchfield in the general assembly. In 1839 he was elected to congress, and was re-elected in 1841, representing the fourth Connecticut district.

Although an eminent lawyer, having an extensive practice in the higher courts, Mr. Smith had a strong inclination for politics and public life. More than that, his worth and prominence were appreciated by the people of the State, and they demanded of him his time and service in the public interest. In 1848 he was a delegate to the whig national convention that nominated General Taylor for the presidency, and as chairman of the national committee of his party he was brought into acquaintance with the foremost men of the country, one of whom was Mr. Lincoln, afterward president. In 1849 he was elected senator in congress and served one term.

In 1854, on his return from the senate, Mr. Smith took up his residence in Stamford, where he was engaged in practice. He also opened and for many years maintained an office in New York city, devoting his time chiefly to professional work in the latter place. Here, too, his worth was recognized, and upon the creation of an international court to adjust slave-holding questions between citizens of the United States and Great Britain, he was appointed by President Lincoln to the bench of the court of New York. He served in that capacity until the court passed out of existence through the emancipation of the slaves. In 1872 he retired from practice and from public life, and afterward lived in Stamford, in quiet and comfort, until the time of his death in 1884.

RICHARD DUDLEY HUBBARD, the acknowledged leader of the bar in this State, governor of Connecticut in 1877-1879, was born in Berlin, Hartford county, September 7, 1818, and died in Hartford, February 28, 1884. Early in life he was left an orphan with means barely sufficient to maintain himself while completing his early education. He

graduated at Yale college in 1839 and then began the study of law with William Hungford. He was admitted to practice in 1842, and before he had seen ten years of active life, he was at the head of the Hartford bar; and while he continued to grow in professional strength in later years he was apparently unconscious of his real worth and of the fact that he was the foremost lawyer of his time in the State.

Governor Hubbard was appointed State's attorney in 1846, and held that office, except two years, until 1868. During the war of 1861-1865 he was a union or war democrat and ably supported Mr. Lincoln's policy throughout that dark period. In 1867 he was elected to congress, but a single session in that body satisfied his political ambition and he declined reappointment. In 1876 he was elected governor of Connecticut and was the first incumbent of the office under the two years term system.

But it was as a lawyer rather than a statesman that Governor Hubbard achieved his greatest fame. He not only was the first lawyer in the State, but was also the greatest orator at the bar. One of his eulogists said of him: "His words and sentences blazed like a sun. At times, disregarding the strictest rules of the rhetoricians, his grand thoughts found expression in pungent and incisive phrase, which sparkled with originality and freshness. He had no room for common-place things in idea or form. His arguments, addresses and eulogies are the finest forensic efforts of our nation, and his State papers are among the best contributions to political literature. He was exclusive in his affections, but he was broad in his sympathies. With the tumult of his whole personal force he hated despotism and oppressions, civil, social and ecclesiastical, and he held the emancipators in high honor. He waited for public office, and that in a day when political gardens blossomed with claims and booms and self-pushings, and when modesty had gone out of the conventions as a lost grace."

In alluding to Governor Hubbard's characteristics as a lawyer the same eulogist (the gifted and eloquent Robinson) said: "His presence was the presence of a master, in the struggles of reflection, the flashes of insight, the responsibilities of counsel, the preparation of causes, the perils of examinations and the triumphs of advocacy. There is no weapon of honorable warfare which he did not wield; there is no method of skillful defense which he did not use. No conflict of authorities confused him, for he poured them all into the crucible of his fervent analysis and burned



RICHARD D. HUBBARD.

away their dross. He feared no antagonist however great, he despised no associate however humble. He brought to his practice great learning, but he was linked to no past which must not yield to a better present. He honored a technicality which covered a principle or was tied to a policy, but for a technicality which had only the credentials of scrupulosity and of weed-tithing, he had only contempt. The wisdom of the old judges he held in high respect, but for their wigs and gowns he had only a smile.

In 1867 Governor Hubbard formed a law partnership with Loren P. Waldo and Alvin P. Hyde, the firm style being Waldo, Hubbard

& Hyde. This relation was continued until the death of Judge Waldo in 1881, and then was changed to Hubbard, Hyde & Gross, Charles E. Gross then coming into the firm. Upon the death of Governor Hubbard in 1884, the style became Hyde, Gross & Hyde, and still later, in 1894, upon the death of Alvin P. Hyde, again changed to Gross, Hyde & Shipman.

JEREMIAH HALSEY was born in Preston, Connecticut, February 8, 1822, and died February 9, 1896. He was descended from the very best New England Puritan stock. His parents were Jeremiah S. and Sally Brewster Halsey. On his father's side he was a descendant in the seventh generation of Thomas Halsey, one of the founders of Southampton, on Long Island, the first English town in New York. His grandfather, also named Jeremiah Halsey, was born in Stonington in 1743, and came to the bar in New London in 1770. During the revolution he abandoned the law, entered the American army and was advanced through the grades of ensign and captain to the rank of colonel. He was a recruiting officer under Washington, one of the captors of Ticonderoga, and the first commissioned naval officer of the United States. On his mother's (the Brewster) side Mr. Halsey was a descendant of Elder William Brewster, the leader of the Mayflower pilgrims.

Mr. Halsey's young life was beset with afflictions, yet he succeeded in acquiring a good education at home before health considerations compelled him to seek the milder climate of the south. He studied law at Hawkesville, Georgia, and was admitted to practice in that State in 1845. In the latter part of the same year he returned home and was admitted to the Windham county bar. In September, 1849, he formed a partnership with Samuel C. Morgan and entered upon his professional career in Norwich. He was in active practice in that city until a few months previous to his death, and that he was indeed a busy lawyer is disclosed in the fact that every

volume of the State reports from 22 to 65 inclusive, with but one exception, contains a record of cases in which his name appears as counsel. In 1870 he was admitted to practice in the United States Supreme Court, and before that tribunal he gained some of his most notable triumphs.

"In moral attributes, in mental characteristics and personal appearance Mr. Halsey bore the stamp of his illustrious Puritan ancestry. A lover of truth and justice for their own sake, of intellect clear and penetrating, calm and self-controlled temperament, lucid in expression and convincing in logic, deeply learned in the

commission, and continued a member of that board until the completion of the new capitol.

"Unassuming and simple in manner, Mr. Halsey was possessed of an unusual cheerfulness and sweetness of disposition which impressed all who came in contact with him. His charity was great and far-reaching, and he was intimately associated as director or advisor with all the principal educational and charitable institutions of his home city. A consistent Christian and devoted churchman, he was for many years connected with Christ church, Norwich, as member, vestryman and warden. In 1882 Trinity college conferred on him the degree of LL. D." (Extracts from biography written by Willis Anson Briscoe).



JEREMIAH HALSEY.

principles, practice and detail of his profession and gifted with a power of discrimination which made easy the practical application of them, he was as counselor, trier and advocate at once, unequaled at the bar of this State.

"Always interested in public affairs, Mr. Halsey was not fond of office, nor did he seek it. He represented Norwich in the general assemblies of 1852-1853 and 1859-1860. From 1853 until his resignation in 1871, he was city attorney of Norwich, and from 1883 to 1888 was corporation counsel. In 1873 he was appointed a member of the new State house

FRANK LOUIS HUNGERFORD, senior partner of the law firm of Hungerford, Hyde, Joslyn & Gilman, of Hartford, is a native of Torrington, Connecticut, born November 6, 1843, and is the son of the late John and Charlotte (Austin) Hungerford of that town. He was given the advantages of a good common school education, was prepared for college and in the fall of 1860 he became a student in the University of Vermont, at Burlington. It was his original intention to complete the academic course, but at the end of his second or sophomore year he left the university and took up the study of law under the direction and in the office of George F. Edmunds (afterwards United States senator in congress and one of the most eminent constitutional lawyers of America), remaining there until 1864.

While Mr. Hungerford was not a graduate of the university, he nevertheless received the degree of master of arts from the faculty of that institution several years afterward. He was admitted to practice in 1865, in Burlington, and soon afterward came to the bar in Connecticut. His professional career was begun in Torrington, his native town, where he practiced about two years; and in connection with his general practice he also served two years as judge of probate. In 1870 he removed

to New Britain and formed a partnership with Charles E. Mitchell, the firm style being Mitchell & Hungerford; but a few years afterward John P. Bartlett came into the firm, upon which the name changed to Mitchell, Hungerford & Bartlett. Mr. Mitchell was a skilled practitioner in patent law, and while the firm naturally was drawn somewhat into what is frequently known as patent cases, Mr. Hungerford did not branch out into that special practice, but confined himself chiefly to the general practice of the civil courts. More than that, he soon gained an excellent reputation as a trial lawyer, and a pleasing and forcible advo-



FRANK L. HUNGERFORD.

cate. These qualities, of course, drew him a large clientage and necessitated his almost constant attendance in the trial courts. In 1893 the firm had offices in New Britain, Hartford and New York city, the two first mentioned offices being in charge of Mr. Hungerford, who thereupon became an active member of the city bar.

In 1897 (September), Mr. Hungerford and his son (William C. Hungerford, a graduate of Yale college in 1893, and of Yale Law school in 1895, and who in the latter year became professionally associated with his father,) united their

practice with that of the city law firm of Hyde, Joslyn & Gilman and established the present partnership of Hungerford, Hyde, Joslyn & Gilman, whose high reputation is well known in professional circles throughout the State.

From what is stated in preceding paragraphs it may be seen that Mr. Hungerford has been a busy lawyer for a period of thirty-five years. He is known to possess a thorough understanding of the law, and at the bar of the courts he is also known as a successful trial lawyer. In his present relation as senior member of one of the leading law firms of the capital city of Connecticut he finds full scope for all his power and thus is recognized as a valuable aid in the administration of the law. Mr. Edmunds, when first elected senator in congress, sought to place Mr. Hungerford in charge of his large and varied practice in the Vermont courts, but the latter preferred the associations and more congenial influences of professional life in his native State. Although a busy lawyer at all times he nevertheless has found time to engage in business enterprises outside the limits of his accustomed pursuits, as he is interested in several of New Britain's industrial concerns. For many years, too, he has been senior counsel for the corporation of New Britain, in which municipality he maintains a residence. Politically he is a republican, and is regarded as one of the most zealous advocates of his party's principles in Hartford county, yet his participation in political affairs has been in the interest of his party rather than for personal advantage. His brief incumbency of the office of judge of probate and as city attorney of New Britain comprise the extent of his political holdings.

On December 21, 1870, Frank L. Hungerford married Sarah A., daughter of William and Sarah (Bliss) Churchill, of New Britain. Of four children born of this marriage only one is now living: William Churchill Hungerford, junior member of the firm of Hungerford, Hyde, Joslyn & Gilman.





JONATHAN TRUMBULL, divinity student, lawyer, judge, governor, was born in Lebanon, Connecticut, on the 12th of October, 1710. His parents were Joseph and Hannah (Higley) Trumbull and were descendants from an old Scotch family. In Scotland the name was spelled Turnball, from which it was corrupted into Trumble and then to Trumbull. Joseph, the father, was the son of John, jr., and was born in Rowley, Massachusetts, in 1699; John, jr., was born in Suffield, Connecticut, and was the son of John, who emigrated to America from Cumberland, England.

Jonathan pursued his studies at Harvard with a view to entering the ministry and was graduated in 1727; he received his license to preach, but never accepted a pastorate, as his thought had been turned to the law, which profession he decided was more to his liking. After a thorough legal training he commenced practice and soon interested himself in politics. He had a happy faculty of agreeing with people and yet having his own way, and, as his judgment was of the best, his plans usually proved wise, which made his constituents feel they had helped him to do just the proper thing and at the right time. This tact added to his political and professional reputation and his law business grew to exceptional proportions for those days.

Mr. Trumbull's popularity and ability as an organizer was soon rewarded by an election to the assembly. This was in 1733 and he occupied that position at thirteen other sessions of the general court. In 1740 he became assistant, a judge of the Windham County Court, then of the Superior Court of the Colony, of which he was chief judge from 1766 to 1769, and in the latter year he was made governor, which office he held until 1783.

The whole life of Judge Trumbull was filled with useful and honorable labor. In addition to his activities in law and politics, he was interested in foreign trade with the West India islands, which business grew to large proportions—which necessitated connections in both England and Holland. His services were al-

ways at the command of the colonies during the war with the mother country; his advice and counsel were solicited by Washington and proved a great aid to that struggling patriot. As a judge he was calm, cautious, exact, and brought to his work a keen knowledge of human nature. He was well known among his contemporaries for his power of patient and thorough investigation, which enabled him to get at all the facts and the law of complicated cases; he was a scholar of cultivated taste and fine thought; gave much time, especially in his later years, to the study of the Bible and the Hebrew language, but left no published writings if his official documents may be excepted. He died August 17, 1785.

On the 9th of December, 1735, Judge Trumbull was united in marriage to Faith, daughter of Rev. John Robinson of Duxbury. Their son, Jonathan, gained much distinction as an aide to Washington during the Revolutionary war. He was afterward elected to the Connecticut legislature, served as a member of the United States congress and was speaker of that body in 1784. In 1796 he was elected lieutenant-governor of Connecticut; governor in 1798, which office he held until 1809, when he was made chief judge of the Supreme Court of Errors. Through his mother, he was a lineal descendant of John and Priscilla (Mullens) Alden.

ROGER MINOT SHERMAN, the son of Rev. Josiah Sherman and the nephew of Roger Sherman, the signer of the Declaration of Independence, was born at Wolcott, Massachusetts, on the 22d day of May, 1773, and died at Fairfield, Connecticut, December 30, 1844. The financial returns from preaching did not enable his father to give Roger M. a thorough education and also support his family, so our prospective lawyer, judge, patriot, like so many of our countrymen who have achieved distinction, had to earn his way while he attended the schools. Notwithstanding his time had to be thus divided between study and work, he was graduated from Yale

at the early age of nineteen years, after which for three years he tutored in that institution. While teaching he busied himself in studying law during his spare moments, and in 1796 was admitted to practice. Fairfield was then the official seat for the county of the same name, and thither young Sherman moved and opened his first office.

Such was the humble way in which our eminent lawyer began his career. His four characteristics, carefulness, thoroughness, truthfulness, courtesy, soon brought him clients, his business expanded, and his intellect so impressed those with whom he came in contact that he was regarded by such men as Gideon Welles and Judge Osborne as having but one superior in all New England—Daniel Webster. Unlike Webster, however, Mr. Sherman preferred private to public life, and as a consequence his mental attainments were not popularly recognized. The bar of his day, however, knew full well his power, and Judge Sherman's opinion was never overlooked, even by strong attorneys and advocates of New York, Massachusetts and other States. On several occasions he sent recommendations to the heads of the departments of the United States government. They presented his side of the case so clearly and concisely that his letters were turned over to the house and senate committees having charge of the questions under discussion, and in one instance his suggestions were made the outline for financial legislation. In fact he was often consulted by the leading statesmen of his day, an honor he thought quite equal to the holding of public trusts when strife was part of the price paid for the attaining or keeping of political offices. Speculation as to what might have been is a useless task, but it is certain his name would be a household word to-day in the United States, and perhaps the civilized world, had he allowed himself to be more active in the political arena.

Judge Sherman's ability as an orator is best described by Senator Hoar in a letter to Frank Samuel Child, published by Charles Scribner's

sons in "An Old New England Town." In part Senator Hoar's letter reads:—

"I have sometimes thought that the present generation in Connecticut were not aware how very great a man he was. I sat a few years ago, at a Yale college commencement, between President Woolsey and the Rev. Leonard Bacon. Dr. Atwater sat right opposite, so that all three joined in the conversation. President Woolsey told me that Roger Minot Sherman came nearer his conception of Cicero than any other human being he had ever heard speak. He said Mr. Sherman was unwilling to speak anywhere but in court in his own county. He was invited frequently to deliver addresses or orations at Yale college, but always refused. Dr. Atwater and Dr. Bacon both assented very cordially to President Woolsey's estimate of Mr. Sherman." On science, literature, religion, educational matters, Judge Sherman also had many invitations to speak in all parts of the country, but he very seldom accepted, and, like the Yale students, his fellow citizens outside his county missed many an oratorical treat. In 1829 Yale conferred on him the honorary degree of LL.D.

This inclination to keep out of the public eye cost Mr. Sherman much political preferment, but he was persuaded at times, and it took no little urging on the part of his friends, to accept public office. In 1798 he was a member of the general assembly; State senator from 1814 to 1818; delegate to the Hartford convention in 1814; from 1840 to 1842 was judge of the Superior court. Coming to the bench in the full maturity of his powers, after a long course of study and practice, thoroughly acquainted with the rules and principles of the law, he needed no preparation, but was ready to enter at once upon the duty of a justice, and his work has been a model for many a judge in later years.

Judge Sherman married Elizabeth, daughter of William Gould, of Bradford, and their home was one of the most hospitable in the State.

The Judiciary and the Bar of
New England

FOR THE

NINETEENTH CENTURY

BIOGRAPHICAL - MAINE

THE JUDICIARY AND THE BAR OF NEW ENGLAND.

MAINE.

NATHAN CLEAVES, Portland, Me., was born in Bridgton, Me., January 9, 1835, and a son of Thomas and Sophia (Bradstreet) Cleaves. His boyhood was passed in Bridgton and in Portland. Fitting for college at the Portland Academy, he entered Bowdoin in 1854 and graduated in 1858. Among his classmates were Gen. Francis Fessenden, of Portland; Gen. J. P. Cilley, of Rockland; the Hon. E. B. Nealley, of Bangor; Gen. Ellis Spear, of Washington, D. C., and other prominent men.

Selecting the law as his profession, Mr. Cleaves studied with the Hon. Joseph Howard and the Hon. Sewall C. Strout, and was admitted to the bar in Cumberland county at the April term, 1861, of the Supreme Judicial Court. He opened an office in Bowdoinham, Me., and subsequently removed to Portland where he formed a law partnership with the Hon. L. D. M. Sweet, then member of congress from the Portland district. This business connection continued until July, 1864, when he formed a partnership with the late Hon. Joseph Howard, under the name of Howard & Cleaves. This continued until the death of Judge Howard, when the law firm of Nathan and Henry B. Cleaves was formed, to which Stephen S. Perry was subsequently admitted.

In politics Nathan Cleaves was a Democrat,

loyal to his party, but he "subordinated his political conduct to his manhood." He was a man of very great personal popularity, and was many times honored with public office, being city solicitor of Portland in 1869, representative to the State Legislature in 1871 and 1875, judge of the Probate Court from 1876 to 1880, surveyor of the Port of Portland four years, and was frequently a delegate to conventions both State and National. At the State Convention of the Democratic party in 1892 he was unanimously selected as a delegate at large to the Chicago Convention that nominated Cleveland and Stephenson, being chairman of the Maine delegation.

Judge Cleaves was connected with many business enterprises and corporations. He was president of the Ellsworth Water Company, a director of the Cumberland National Bank of Portland, of the First National Bank of Bar Harbor, the Westbrook Trust Company, and other leading business and financial corporations of the State. He was a prominent member of the Masonic fraternity and of the Odd Fellows, president of the Society for the Prevention of Cruelty to Animals, and a member and officer of many charitable organizations, the treasuries of which have many times felt the benefit of his quiet but effective generosity. He was a faithful and devoted member of St.

Luke's parish and for many years one of its vestrymen.

Judge Cleaves was in active practice during a period of more than thirty years. He attained great prominence in the profession he loved so much, and always enjoyed the confidence, respect, and esteem of the bench and bar, and of the entire community.



NATHAN CLEAVES.

Nathan Cleaves married in May, 1865, Caroline, the accomplished daughter of Judge Joseph Howard. She died at Augusta in February, 1875, while her husband was there as representative from Portland.

Judge Cleaves died at his residence in Portland on September 5, 1892. Memorial exercises were held by the Cumberland Bar Association before the Supreme Judicial Court, and the following resolution was adopted and placed on the records of the court:

"Resolved, That the members of the Cumberland bar have heard with a deep sense of personal grief and loss the news of the sudden illness and death of their distinguished associate member, the Hon. Nathan Cleaves, at the very summit of his professional career; that his contemporaries at the bar during their lives will cherish the memory of his unvarying courtesy, his dignity of professional bear-

ing and demeanor, his pure life and character, his eminent legal attainments, his fine training and capacity in all matters pertaining to his profession, his exceptionally good forensic judgment, tact, and skill, and the rare and excellent traits and qualities of his mind and heart; and, cherishing this memory of him ourselves, we write also this brief memorial of him that they who come after us in the profession, to a late posterity, may remember him as one of the models and ornaments of his own time."

In speaking of Judge Cleaves a distinguished member of the bar said: "It is seldom that the bar has been so affected as by the death of Nathan Cleaves. For a long time he had been one with us, one of us. He was standing by our side in our very midst—we looked up and he was gone. The good man, whose life had become knit with ours by long memories and all fond associations, at the meridian of his intellectual faculties, in the robes of his profession and in the midst of its heaviest responsibilities and obligations, lay dead at his post. He who labored without rest to bring the best fruitage of life to its harvest, had fallen in his place when the boughs hung heaviest, when his work needed him most—had paused, and was still amid the ripe wealth of autumn. The sickle still gleamed in the harvest field, fallen from the reaper's hand. In the sunlight rustled still the ripened and ripening grain, which no hand now shall ever gather into sheaves. All was as it had been, but his work was done. All was as before, but another companionship, prized and held dear, the charm of one friendship more, had disappeared from our lives."

The words of eulogy bestowed upon the life and character of the Hon. Nathan Cleaves by the court and his brethren at the bar were a just and merited tribute to an honored and noble life.

HENRY B. CLEAVES, of Portland, Me., was born in Bridgton, Maine, February, 1840, and is a son of Thomas Cleaves, who also was a native of Bridgton, and a man of high character, great energy and strict integrity. His mother was Sophia Bradstreet Cleaves, a woman of high worth, and a daughter of Daniel Bradstreet, who came from Rowley, Mass., and settled in Bridgton in the early days. The family included five children—Robert A., Nathan, Thomas P., Henry B., and Mary S. Cleaves. The last named is now the wife of William W. Mason. A sketch of Judge Nathan Cleaves is given in these pages.

Gov. Henry B. Cleaves was educated in the common schools of his native town and at the academies of Bridgton and Lewiston Falls. In the summer of 1862 he enlisted as a private soldier in Co. B, 23d Maine Volunteers, under Col. William Wirt Virgin, late a justice of the Supreme Court of the State of Maine. Having served out the term of his enlistment at Poolesville on the Potomac and at Harper's Ferry, during which period he was promoted to the rank of orderly sergeant, he was discharged when the regiment was mustered out. However, influenced by his patriotism, he immediately re-enlisted for three years under Gen. Francis Fessenden, a son of the Hon. William Pitt Fessenden, who was recruiting a veteran regiment for active service in the Department of the Gulf. Young Cleaves was appointed first lieutenant of Co. F. On one occasion in the course of the service, when the officers of Co. E had been either killed or disabled in action, he acted as captain. A portion of his time was served in the Department of the Gulf, where he participated in various engagements under General Banks on the Red River expedition, at Mansfield, Pleasant Hill, Cane River Crossing, and other places. After the close of the campaign in Louisiana, the regiment was ordered to Virginia, and Lieutenant Cleaves served during the remainder of the war in the Army of the Potomac, and with General Sheridan in the Shenandoah Valley. When the war ended, he was offered a commission in the

regular army by Secretary of War Stanton. Declining this honor he returned to his home in Bridgton, and was employed as a day laborer in Perley and Styles's sash and blind factory. While here he studied law with such assiduity that in September, 1868, he was admitted to the bar. After this he removed to Portland and formed a law partnership with his brother, the late Judge Nathan Cleaves.



HENRY B. CLEAVES.

The firm had a large and lucrative practice, and was extensively known throughout the State and New England. Governor Cleaves has been a director in many of the business corporations of the State. He is a prominent member of the Grand Army and the Maine State Veteran Association.

In the practice of his profession and in matters of charity he has always shown a great friendship for the old soldier. His successful defense of William P. Best, a disabled veteran, in the extradition proceedings brought against him by the province of New Brunswick, will be readily recalled, as it excited great interest at the time.

Governor Cleaves, who has always been a Republican, cast his first vote in a national election for Abraham Lincoln, while still in

active service in Virginia in the fall of 1861. He was a member of the Legislature from Portland in 1876 and 1877, and served as chairman of the judiciary committee. He was elected city solicitor of Portland in 1877, and during his two years in that office tried many important cases for the city. He was elected attorney-general of Maine in 1880, and was twice re-elected to this important office by the Legislature, serving five consecutive years. In this period, besides trying some eighteen murder cases, he prosecuted the important State tax cases against the railroad and telegraph companies to a successful termination, settling conclusively the right of the State to levy a franchise tax upon these corporations.

Nominated for governor at the Republican State Convention held in Portland in June, 1892, he was elected in September of that year and inaugurated on January 5, 1893. His nomination on this occasion without a dissenting voice was unusual in the politics of Maine, and evidenced his great popularity with the people. His renomination by acclamation at the large and enthusiastic convention held at Lewiston, June 5, 1894, was a deserved recognition of the man and the citizen, of the faithful public officer, and of his able administration of the affairs of the State during his first term. At the September election in 1894 he was re-elected by nearly 10,000 majority. By repeated re-elections and large majorities he served in the high office until 1897. Governor Cleaves's inaugural addresses, which are models of construction and are such as only a scholar and statesman can write, have elicited commendation wherever noticed by the press. In the performance of his official duties he has invariably guarded the interests of the State with sedulous care. One of the leading papers of Maine recently said: "To-day, throughout the length and breadth of the good old State of Maine the name of Governor Cleaves is not only known, but is also held in the highest esteem. Political opponents even vie with each other in pay-

ing tribute to his administrative qualities, as well as to the goodness of his great big heart."

Upon his retirement from public office at the close of 1896 the State Legislature passed the following commendatory resolution:

"January 7, 1897.

"Voicing the sentiment of the people and press of Maine, the House of Representatives desires to place on record its recognition of the distinguished services rendered by the retiring governor; therefore,

"Resolved, That we extend to Hon. Henry B. Cleaves, who has guided the Ship of State for four years, our recognition of his honorable service. Faithful to every trust, diligent in the performance of all public duties, devoted to the interests of the whole State, he has met every emergency and given to the people of Maine an upright, honest and dignified administration.

"He has been the governor of all: the doors of the executive chamber have always been open to every citizen of the State and the humblest has never been turned away without a patient and respectful hearing.

"He retires from the high office he has so ably and faithfully filled with the confidence, respect and affection of the whole people."

Upon retiring from official life Governor Cleaves immediately resumed the practice of his profession, with Stephen C. Perry as his partner.

HANNIBAL HAMLIN, vice-president and statesman, was born at Paris Hill, Oxford county, Me., August 27, 1809, and was a son of Cyrus and Anna Hamlin. The latter was a daughter of Deacon Elijah Livermore, who was one of the original owners of the township that bears his name. The paternal ancestry of the Hamlins were of English origin and among the early settlers in Massachusetts. The grandfather of Hannibal was Elijah H., who resided in Pembroke, Mass., and commanded a company of minutemen in which

his five sons were enrolled, in the Revolutionary war.

The boyhood of Hannibal Hamlin was passed on the paternal farm and in the district school. His parents were not rich and their son was trained in industry as well as morality. He prepared for college at Hebron Academy, and at the same time pursued the study of law as far as his time permitted; but the death of his father when he was eighteen years of age compelled him to abandon his ambition for a college education and take the active management of the home farm. After the lapse of two years he associated himself with Horatio King in the purchase of the *Jeffersonian* newspaper, a weekly journal published at Paris, Me. Mr. Hamlin began learning the practical part of the printing business and soon became an excellent compositor; but his former determination to become a lawyer was too strong to be stifled, and at the end of six months he sold his interest in the newspaper to his partner and resumed study. In January, 1833, he was admitted to the bar at Paris and in the following May began practice in Hampden, Me.

Mr. Hamlin was now twenty-four years of age, with mind under full discipline and well stored with knowledge required in study and reading. He had practiced and studied elocution and in connection with the law practice that soon came to him, he rapidly gained a reputation as a public speaker. In December, 1833, he married Sarah J., daughter of Judge Stephen Emery, a prominent attorney of the State of Maine.

Mr. Hamlin early connected himself with the Democratic party and in 1835 represented his town in the State Legislature. He was re-elected five successive terms, and was speaker of the House in 1837, 1839, and in 1840. In the latter year he received the nomination for Congress and took part in an active campaign in which he introduced, for the first time in the State, the plan of holding joint debates by the candidates on the prominent political issues before the people. It was the famous cam-

paign of "Tippecanoe and Tyler too," and Mr. Hamlin was defeated, with most of the other Democratic candidates on the ticket. After the completion of the census of 1840 he again became a candidate for Congress, was elected, and re-elected in 1845.

Early in his political career Mr. Hamlin became identified with the anti-slavery movement, and when Texas was annexed to the



HANNIBAL HAMLIN.

United States, he emphatically announced to his constituents that any further attempt to extend slavery would meet with his strenuous opposition. The prominent part he took in connection with the famous Wilmot Proviso and his pronounced anti-slavery views, made him many enemies in his party. It will be remembered that the Wilmot Proviso excluded slavery from all the acquired Mexican territory. It marked a point where the two pathways, one leading to the indefinite extension of slavery, and the other to its strict confinement to its then existing limits, permanently separated. Mr. Blaine, in his "Twenty Years in Congress," says: "The consecration of the United States to freedom became from that a rallying cry for every shade of anti-slavery sentiment." It was not in Mr. Hamlin's nature

that he could long ally himself with, or in any way countenance, a party that favored the extension or perpetuation of human bondage.

In 1848 he was elected to the United States Senate for an unexpired term and in 1851 was elected for the full term. After serving in this high legislative body until 1857, during which period he gained a national reputation for his lofty statesmanship and distinguished ability, he resigned his seat to take the governorship of his native State, to which office he was elected by the then recently formed Republican party, the principles of which entirely accorded with his views. He resigned the executive chair on February 20, 1857, and was re-elected to the United States Senate for the full term from March 4, 1857. In January, 1861, he again resigned the senatorship, having been elected vice-president of the United States on the ticket with Abraham Lincoln. From 1861 to 1865 he presided over the Senate.

Mr. Hamlin's relations with the great president were of the most cordial character, presenting one of the few instances where the president and the vice-president were in accord through the presidential term. Mr. Lincoln was deeply disappointed that Mr. Hamlin was not re-elected, and had he been, the history of the next two or three years in governmental affairs would undoubtedly have presented a vastly different picture.

Mr. Hamlin was appointed collector of the Port of Boston, which position he held in 1865-66. In 1861 he was appointed one of the Regents of the Smithsonian Institution, held the office until 1865, and was reappointed in 1870, remaining in the position in all twelve years. He was again called to the United States Senate, serving from 1869 to 1881 with distinguished ability, and resigned the office to accept the position of United States minister to Madrid. This office he soon resigned and retired from public life. Mr. Hamlin was nearly fifty years in public office, giving him little opportunity to engage in the practice of a profession which he would certainly have

honored in a marked degree. During the span of his political life the most momentous events took place, in many of which he bore a prominent part. Finally, when he retired full of honors from public life, there was not a visible stain upon his character. He was ever distinguished for his rigid adherence to the right as he viewed it, regardless of ulterior consequences. His integrity was inflexible, his manhood of the sturdiest type, and his mental powers exceptional for their strength and versatility. Mr. Hamlin died in Bangor, July 4, 1891.

THOMAS BRACKETT REED, Portland and New York, ex-speaker of the House of Representatives, was born in the city of Portland, Maine, October 18, 1839, and is a son of Capt. Thomas B. and Matilda Prince (Mitchell) Reed. His father was a native of Peck's Island, coming from old Colonial stock, his mother being a native of North Yarmouth, Maine. One of his remote ancestors was George Cleeve, the pioneer white settler of The Neck (as Portland was formerly called), two of whose granddaughters married brothers named respectively Anthony and Thomas Brackett, a Brackett grandchild eventually marrying into the Reed family. From such ancestry Thomas B. Reed inherited those superior mental qualities which have enabled him to rise to national prominence and made him known throughout the country for eminent statesmanship and political power.

Thomas B. Reed was educated in the public schools of his native city and Bowdoin College, which institution he entered in 1856, graduating in 1860. In college he was more conspicuous for his literary studies and tastes, than for hard study in the curriculum, until towards the close of his course. At his graduation he took the first prize for English composition as a "First Part." Following his graduation he taught a little more than a year, a part of this period as one of the assistants in

the Portland High School. He had already begun the study of law, to which he applied himself closely, until April 19, 1864, when he was appointed acting assistant-paymaster in the United States navy and was assigned to duty on the "tin clad" *Sybil*, at that time engaged in patrolling on the Cumberland, Tennessee, and Mississippi Rivers.

Soon after the close of the war Mr. Reed was admitted to the Cumberland county (Me.) bar and began practicing law in Portland. In 1867 he was elected a member of the State Legislature, and began his long and conspicuous political career. During his first term he secured the passage of a bill giving a Superior Court to Cumberland county, reducing the time when a case could be heard from three years to three months. In 1869 he was re-elected to the lower house, and in 1870 was chosen State senator. In the same year he was called to the office of attorney-general and assumed his duties at the age of thirty years, being the youngest man to serve in that responsible capacity since the organization of the State. He became city solicitor of the city of Portland in 1874 and remained in that office four years, his experience and ability being of great benefit to the city, which at that time had large interests at stake. In 1876 he was elected to Congress and by repeated re-elections held the office until the close of the session of 1899. For several years before his election as speaker of the 51st Congress he had been the acknowledged leader of the Republicans in the House. The greatest service Mr. Reed did for the country during his first term as speaker was the death blow which he gave to the assumed right of the minority to obstruct legislation. His complete triumph and the adoption of his rulings by his Democratic successors are still fresh in the public mind.

Considerable light is thrown upon Mr. Reed's characteristics as demonstrated in the halls of Congress in a remark made by one of his friends. Said he: "Mr. Reed is a born debater, aggressive and cautious, able to strike the right nail

on the right head, and at critical moments to condense a whole argument with epigrammatic brevity. His epigrams are worthy the literary artist, in that they are perfect in form: though struck out upon the spur of the moment, you cannot take a word from them or recast them." Again a recent writer in *McClure's Magazine* says: "Reed has shown better than any parliamentarian living how the turbulent battling of legislative bodies, so chaotic in appearance,



THOMAS B. REED.

are not chaos at all to one who has the capacity to think with clearness and precision upon his feet. Such a man assimilates the substance of every speech and judges its relative bearing upon the question. At the beginning it is hard to tell where a discussion will end, but gradually as the debate goes on, the two or three points which are the key of the situation, become clear to the true debater."

It is characteristic of Mr. Reed that he would never vote for a man whom he distrusted nor a measure which he detested, no matter how great the clamor for such action by his constituents. He has never been "all things to all men" in any sense.

Socially Mr. Reed is serene and overflowing with good nature and his conversation is al-

ways sparkling, exhilarating and instructive. He is a member of the Cumberland Club, whose one hundred members are of the different political parties. Most of them have been boys together at school and cull each other by their christian names. There reigns supreme a fine spirit of equality, an unpretentious give-and-take sort of intercourse, which is the ideal object of a club.

Mr. Reed has never allowed his engrossing duties as a public man to interfere with his literary pursuits. He is well versed in English and foreign literature, and has contributed political and literary articles to some of the leading periodicals of the day. He takes cheerful views of human life and society, and is not one of those who look backward for a golden age. His own words give no uncertain sound: "Whoever doubts progress, doubts God. The rich have grown richer, but so have the poor—richer in rights and privileges, richer in comforts and happiness."

Mr. Reed married, in 1870, a daughter of Rev. S. H. Merrill, who served in the Civil war as chaplain of the First Maine Cavalry.

GEORGE F. EMERY, Portland, was born on Paris Hill, Me., November 10, 1817. He is a son of Judge Stephen Emery, of Paris. Two of his sisters were the first and second wives of Hannibal Hamlin, and were richly endowed with feminine graces. Mr. Emery began his preparation for college in a private school at Andover, Me., taught by Rev. Thomas T. Stone. Among his fellow pupils were George H. Shirley, Henry B. Poor, and the late Judge Virgin. He also attended the Thornton Academy at Saco and the Farmington Academy, and entered Bowdoin College at the age of fifteen years in the class of 1836. After graduating he studied law in his father's office and in 1837, though not yet admitted to the bar and only twenty years of age, took charge for six months of the office of a Waterford lawyer who was prostrated by illness.

He was admitted to the Oxford bar on the day that he was twenty-one years old and entered into partnership with his father, the firm name being Stephen Emery & Son.

He was appointed register of probate by Governor Dana and reappointed by Governor Anderson, and after serving six years, concluded to resign and remove to Portland, which he did in 1846. He opened a law office there and soon after, at the request of Charles Holden, one of the owners of the Eastern Argus, began to write leading editorial articles for that paper, wherein he so forcibly advocated the exclusion of the slaves from the Territories under the Wilmot Proviso that the policy of the paper became so distasteful to the Polk administration that pressure was brought to bear which induced Mr. Emery to resign, since his attitude on the subject was unalterable.



GEORGE F. EMERY.

In 1847, when Hannibal Hamlin was a candidate for United States senator, there was strong opposition to him in Oxford county among those Democrats who were in sympathy with the opponents of the Wilmot Proviso. They labored to defeat Mr. Hamlin, and Mr. Emery undertook gratuitously the task of conducting the Oxford Democrat in the defense of

his distinguished brother-in-law. He encountered bitter opposition, but he and his friends were victorious and the Oxford delegation voted for Mr. Hamlin.

In 1848 Mr. Emery was appointed by Judge Levi Woodbury to be clerk of the United States Circuit Court, which position he retained until 1876. In 1853 he was appointed pension agent for the State of Maine by President Pierce and reappointed by President Buchanan, occupying the position eight years. He was also elected by his political opponents to be a member of the City School Committee and served thereon seven years.

In 1876 he resigned as clerk of the Circuit Court and, removing to Boston, took charge of the *Morning Post* as president of the Post Publishing Company. At one time the entire responsibility of the financial, as well as editorial departments, was upon his shoulders. He strongly urged the Democratic view of the situation at the time when Hayes and Tilden were nominated for the presidency, and the former was declared elected.

During the Greenback agitation the *Post* adhered to the old hard money doctrine and firmly opposed that of greenbackism, of which Benjamin F. Butler was at the head in Massachusetts. The course of the *Post* antagonized the Democracy and in consequence the *Boston Globe* was started as a Democratic paper, opposed to the policy of the *Post*. Mr. Emery severed his connection with the *Post* and returned to Portland in 1881, where he has since resided.

There are three events, which as a citizen of Portland, Mr. Emery may certainly look back upon with satisfaction. First, in 1871 he was nominated as the Democratic candidate for mayor, without any agency of his, but by the spontaneous desire of the great majority of his party. He immediately published his views relating to the principles upon which the municipal affairs should be conducted and embodying the doctrine that civil office is a public trust. Because of his refusal to give a satisfactory pledge to party friends engaged in

the liquor traffic, that faction of the Democracy did not vote for him. Nevertheless, at that time, when the Republicans were overwhelmingly dominant, he came within about 300 votes of election. Second, he actively opposed, contrary to the wish of many personal and political friends, and to his own interest as a bond holder, the loaning of the city credit to the railroads. Third, he took a prominent part early in the Rebellion in co-operating with others in organizing a Union movement to defeat the election of his own political friends who had been nominated on a platform adverse to the prosecution of the war, on which occasion he drafted a series of resolutions, not only in justification of the movement, but setting forth the reasons for which the war should be prosecuted to a successful issue.

Still another recognition was his appointment by Mayor Melcher and reappointment by Mayor True, both Republicans, to be a member of the Board of Water Commissioners, whereon he served with his customary zeal and unselfishness. Their successful efforts in reducing the water rates and making other desirable changes are remembered.

Two dominant characteristics of Mr. Emery are apparent from the foregoing facts. He is a Democrat by birth and training and convictions, but one of the old strict-construction school, now dying out, and one who has never and would never allow his partisanship to dominate his conscience. He is also a man of decided literary taste and talent, who has found his greatest pleasure in literary pursuits, both in writing and reading. He has long been a member of the Maine Historical Society and contributed several valuable papers, among them a sketch of John Appleton, his brother-in-law, of Cyrus Woodman, a classmate, and a vindication of the Baptists of Maine, in reply to the *Journal* of Paul Coffin, which he regards as a slanderous attack upon the early members of that religious body.

He is himself a member of the Baptist church, but is a broad and liberal Christian.

His critical researches and observations of late in connection with theology have been extensive, and the more he has studied, the more liberal he has become. He believes that no party and no church has a monopoly of truth.

Mr. Emery's intimates know him as a man of fine-grained, high-strung temperament, of elevated tastes and sentiments and sympathies, and the soul of honor. They know him also as a man of quiet and genuine humor and wit. In 1892 he received the degree of LL.D. from Colby University. He is a ready and graceful extemporaneous speaker and has written numerous poems of considerable literary merit. Mr. Emery has now substantially retired from the activities of life and devotes his efforts to the care of estates and property that have been placed in his charge by those whose confidence in him was and is unbounded.

Mr. Emery was married September 7, 1841, to Abby Eliza Appleton, daughter of John W. Appleton, of Portland. She died August 20, 1892. They had six children, four sons and two daughters, of whom two sons only are living. They are John A. Emery, a Portland merchant, and Hannibal H. Emery, treasurer of the Portland Safety Deposit Company.

NATHAN CLIFFORD, of Maine, judge of the United States Supreme Court, was born in Rumsey, Grafton county, N. H., August 18, 1803. The Clifford ancestor in New England was George Clifford, who came from Arnold, Nottingham county, England, in 1664, resided for a time in Boston, and finally in Hampton, N. H. He was a lineal descendant from the ancient and still existing family of Clifford which has been conspicuous in English history. The Cliffords in this country sprang from the New Hampshire parentage, the late Gov. J. H. Clifford and Judge Nathan Clifford having descended from the same ancestry a few generations back. The grandfather of the subject served as an officer in the Revolutionary army and was in all the impor-

tant battles from Bunker Hill to Yorktown. The father of the subject lived in Rumsey until 1820, when he died, leaving Nathan as his only son.

The father, though poor in the world's estimate of wealth, was a man of strong character, and his wife was a woman of great worth and earnest in all of her life purposes. The son, therefore, was reared amid pure and healthy influences, which strongly impressed his after life. In his younger years no expectations were entertained for him other than that he should follow in the footsteps of his father as a tiller of the soil. But the boy had other hopes and ambitions. He early felt a secret desire to obtain education beyond what he saw in other lads, that would fit him for a more elevated station and higher life duties. He attended the school in his native town, patiently abiding his time until he was fourteen years old, when he openly expressed his desire for broader opportunities, and finally overcame objections and entered the Haverhill Academy, where he remained three years, pursuing his studies with ardor until 1820. This was a period of hard struggle with him, his terms in the academy being periodically interrupted with seasons of teaching to obtain money for his personal expenses. He then took a year's course in a literary institution at New Hampton, at the close of which he was eighteen years old. He now entered the law office of Hon. Josiah Quincy, the leader of the Grafton county bar. This was the beginning of the accomplishment of his long settled purpose, and no student ever labored more patiently or with greater industry than he did during the succeeding three years. To prepare for his law study he pursued a broad course of general reading while in the academy. At that time a person who was not a college graduate had to study five years in order to obtain admission to the bar. This course he followed, but still interrupting his regular studies by terms of teaching, until 1827. At the same time he gave many of his hours to study of the classics as taught in the regular



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Nathan Clifford

courses of New England colleges. In May, 1827, he was admitted to the bar in the Supreme Court of his native State and opened an office in Newfield, York county. As a result of his early habits of close study and reflection, coupled with a remarkable memory, the young man brought to bear upon his new vocation a substantial fund of legal knowledge, with the capacity to apply it to questions of law and practice, and soon gained the confidence of the people and a good business. Not long after he settled in Newfield he married Hannah, eldest daughter of Capt. James Ayer, one of the leading citizens of the place. Her ancestry figured in the Revolution and she herself was a woman of marked characteristics and great personal worth.

Mr. Clifford was early led into political life and warmly espoused the principles of Democracy. There were then hardly a score of men of that political faith in Newfield, but nevertheless he had gained sufficient personal popularity to elect him in 1830 by a large majority to represent the town in the State Legislature, an office to which he was three times re-elected. In 1833 he was chosen speaker of the House, and in the following year was again honored with that position. At the same time his success in his profession continued and in 1834 he was appointed attorney-general of the State, an office demanding high legal qualifications and mature judgment. In the exciting political contest of 1838 he was nominated and elected to Congress from the First district of Maine, and was re-elected in 1840. He left that legislative body with his reputation firmly established as an able and zealous leader and an accurate parliamentarian. Originally favoring the election of Van Buren to the presidency, he however supported the nomination of Polk with earnest and effective zeal. He had a very extensive legal practice when he was invited by President Polk to a seat in his cabinet as attorney-general of the United States. The duties of this high office were congenial to his tastes and his administration was such as to prove him a worthy successor of the best of

those who had preceded him. While in the Cabinet he was appointed a commissioner to exchange ratification of peace between the United States and Mexico, and after peace was fully established he remained as envoy extraordinary and minister plenipotentiary in that country.

In 1849 he settled permanently in Portland, Me., and continued in practice of law until his appointment as associate justice of the Supreme Court of the United States by President James Buchanan, January 12, 1858. Judge Clifford now found himself associated with a bench of old men and the business of the court far in arrears. To the work of relieving this situation he applied himself with characteristic energy and by continuous labor eventually saw the docket much reduced. His opinions as a Federal justice form a respectable part in number and importance of forty volumes of Reports. His judgments on the Circuit are in part embodied in four volumes, "Clifford's Reports," edited by William H. Clifford, of the Cumberland county bar. After the death of Chief Justice Chase, Justice Clifford acted as chief.

Judge Clifford was selected as president of the celebrated Electoral Commission of 1877. Amid the heated discussions of that memorable event, when the whole country was deeply agitated on the subject, the president of the commission retained his perfect calmness, evincing wisdom and fairness in his decisions, and winning the commendation of even his opponents. He agreed with the minority and delivered an opinion on the question of the Florida returns, but deeming it unavailing, rendered no public judgments on the votes of other contested States.

Justice Clifford, for several years before his death, was privileged to retire from the bench and to receive the pension provided by law. But the relinquishment of duty was not in accordance with his disposition or the habits of his life. He continued with unabated clearness and force of mind in the performance of his great judicial labors until overtaken by his

last illness. He died in Cornish, Maine, July 25, 1881.

Judge Clifford was a man of noble and commanding presence and exhibited in his bearing and manner a graciousness and dignity combined, that both won affection and inspired respect. Strength, culture and intellect were written on his face. He was a man of unyielding determination and immense capacity for study and investigation, and faced every duty, however onerous, with cheerfulness and confidence in himself. He possessed the true genius of labor. Industry, truthfulness, firmness, integrity and entire fidelity in the performance of duty were among his leading characteristics. The urbanity and courtesy which marked his intercourse with men, secured the friendship of a wide circle of eminent persons with whom he came in contact during the many years of his public life. The judge was of a temperament to prize such associations and cherished the friendships which he had thus formed to the end of his life. The simplicity, elevation and solidity of his character impressed all with whom he came in contact. A memory of wonderful power easily retained the fruit of a long, arduous and studious life.

Bowdoin, Dartmouth, Brown and Harvard all conferred upon him the degree of Doctor of Laws.

In the proceedings of the Supreme Court of the United States, as well as in the Circuit Courts of the country, held to honor his memory, bench and bar united in conceding to the venerable magistrate the character of a great, wise and just judge.

WILLIAM HENRY CLIFFORD, Portland, son of Nathan Clifford, just noticed, was born in Newfield, York county, Me., August 11, 1839, the third son of the family of children. He was fitted for college at the Portland Academy and Professor Wood's school at Yarmouth, Me. He entered Dartmouth College from which he was graduated

in 1858. Having determined upon making the profession of law his life work, he began study in the office of Shepley & Dana, Portland, and completed his course in the office of Benjamin R. Curtis in Boston. Upon his admission to the bar he opened a law office in Portland, where he has practiced his profession ever since.



WILLIAM HENRY CLIFFORD.

During eight or ten years he served as commissioner of the United States Circuit Court for the district of Maine, and a very large portion of the commitments for violation of the Federal statutes were, for a series of years, made in his court. Later he acquired an extensive practice in the Federal courts of this and neighboring circuits, and in the Supreme Court at Washington. He is the author of Clifford's Reports (four volumes), a compilation of Justice Clifford's decisions on the New England Circuit.

Mr. Clifford has from an early period in his life taken an active part in the political contests in Maine on the Democratic side and has shared in the fortunes of his party in this State. He has achieved a high position as a Democratic leader, the result of having participated in the labor of every political campaign

in Maine since the close of the Civil war and of other services to his party outside of the State. He has been twice nominated as Democratic candidate for Congress in the First Maine district, once against John H. Burleigh, and the second time as the opponent of Thomas B. Reed, and won credit and respect by both his abilities and powers as a political speaker, and by the vigor and energy of his campaigns. Mr. Clifford has served on the National Democratic Committee as the Maine member, has been called upon to preside at the State conventions of his party, on which occasions his opening speeches have been printed by the State Committee for circulation as campaign documents. He is the author of numerous speeches and addresses of a literary and other character. Mr. Clifford has been educated in the school of Democracy, and still holds the faith as to strict constitutional construction, tariff, and sound money, of the great party that once swayed the destinies of the country and has left its impress for all time upon its institutions and policy. In his profession he has been more than ordinarily successful, his natural and acquired qualifications being of a high order.

Mr. Clifford married, in 1866, Ellen G., daughter of the Hon. J. B. Brown, of Portland. They have three sons and one daughter. One of the sons is Nathan Clifford, now law partner with his father, a brief sketch of whose life immediately follows.

NATHAN CLIFFORD, Portland.—Among the more prominent of the younger members of the bar of Portland, Maine, is Nathan Clifford, son of William Henry Clifford, and grandson of Nathan Clifford, sketches of whose lives precede this. He was born in Portland, June 17, 1867. His education was obtained in the common schools of his native city, at Phillips Andover Academy, and he was graduated from the Portland High School in 1886. Entering Harvard College

in the fall of 1886, he graduated with honors in June, 1890. In the fall of that year he began the study of law in the office of his father in Portland and was admitted to practice in May, 1893. He became a member of the law firm of Clifford, Verrill & Clifford, which connection still continues. Although still a young man in his chosen profession, Mr. Clifford's devotion to the interests of his clients, his clearly-defined ability as a lawyer, and his manly character have already brought him into well-deserved prominence.



NATHAN CLIFFORD.

Following in the political course of his honored ancestors, Mr. Clifford is a Democrat, a fact that is not usually conducive to success at the polls in the State of Maine. Immediately after his graduation he took a deep and active interest in the political field and has been a candidate of his party for various offices. He also served acceptably for some time as chairman of the Democratic City Committee.

Mr. Clifford was married in May, 1894, to Caroline L. Devens, of Boston. They have one child—Katharine Louise, born August 18, 1898.

JOSIAH HAYDEN DRUMMOND, Portland, Me., was born in Winslow, Me., on August 30, 1827. He is descended from Alexander Drummond, a Scotch-Irish Presbyterian, born in Scotland, who settled in Georgetown, Me., in 1729 with his family of two married sons, one married daughter, and one widowed daughter with her two daughters. Alexander Drummond was killed in the following winter



JOSIAH H. DRUMMOND.

by a falling tree. His eldest son, Patrick Drummond, born June 11, 1694, had a daughter Ann (afterwards wife of Rev. William McClelland) when he came to this country. His first wife died after bearing four other children, and he married, second, Susannah Rutherford, daughter of Rev. Robert Rutherford.

Patrick and Susannah Drummond had a son John, born in Georgetown (now West Bath), Me., September 27, 1744. He married Mary McFadden, daughter of Daniel and Margaret (Stinson) McFadden, born August 4, 1745. He died in Georgetown, September 10, 1771, and she in Winslow, February 2, 1821. They had a son, Rutherford Drummond, born Octo-

ber 20, 1770, settled first in Vassalboro, Me., and then in Sidney; and John Drummond, born April 13, 1772, settled in Winslow and married Damaris Hayden, born in Bridgewater, Mass., February 18, 1775. She died September 3, 1851, and he December 24, 1857. They had nine children, the eldest of whom, Clark Drummond, was born July 5, 1796, in Winslow; married, June 5, 1821, Cynthia Blackwell, daughter of Capt. Mordecai and Sarah (Burgess) Blackwell, born in Winslow, January 9, 1799; she died February 8, 1868, and he September 5, 1888, on the home farm in Winslow, on which he, all of his children and one grandchild were born. They had eleven children, the elder three of whom died in infancy. The eldest of the eight survivors was Josiah Hayden Drummond, the subject of this notice.

The son of a farmer, the early life of Josiah H. Drummond was passed in the toil incident to such conditions, alternated with regular terms in the district school, with occasional brief periods of attendance at private schools. He early developed unusual proficiency in mathematics, and when, in the spring of 1839, he was able to attend the Vassalboro Academy eight weeks, he took algebra as his principal study. At the end of the spring and summer farm work, which called him home, he resumed study in the academy, taking up Latin. At the close of the fall term his academical course was suspended until the fall of 1840, when he began fitting for college, working on the farm during vacations. In the second year of his preparation he was assistant teacher of mathematics. He entered Waterville (now Colby) College in August, 1842, a few weeks before his fifteenth birthday. In college he took high rank, particularly in mathematics, to which he devoted much time out of the regular course.

During the long first winter vacation, then customary in order that students might teach, he worked hard in the woods at home, as he was still too young to teach; but in the vacations of the second and third years he taught in the public schools. In the vacation between

the third and fourth years there was an unexpected vacancy in the principalship of China Academy, which he was persuaded to fill, at the same time keeping up his class studies and taking part in the "senior exhibition." After teaching two terms at China he returned to Waterville, took his examinations, and was graduated in August, 1846, just before he was nineteen years old.

Returning to China, the young man took charge of the academy, continuing a year and a half. He then went to Vassalboro and assumed charge of the academy there, continuing three terms. Mr. Drummond had ere this resolved to become a lawyer, and as the Vassalboro institution was to be closed during the winter, he, in December, 1848, began the study of law in the office of Boutelle & Noyes at Waterville, returning to teach the Vassalboro Academy in the term of 1849.

In those days the salary of even the principal of a country academy was meagre, and the savings of his three years of teaching were scarcely sufficient to pay a debt incurred during his collegiate course and give him support. He, therefore, expected to continue teaching, studying law at intervals only; but in the summer of 1849, Mr. Boutelle practically retired from practice, though he retained his desk in the office some years, while Mr. Noyes became engaged in railroad business; a proposal was made to Mr. Drummond that he should remain continuously in the office, giving such attention to the business as he was able, and be paid a salary that would meet his expenses. This proposal he cheerfully accepted. During the ensuing year he attended the courts and tried some causes before magistrates, gaining experience that was of great benefit to him.

In the fall of 1850 Mr. Noyes returned to his office, and Mr. Drummond was admitted to his bar in October, after having taken the necessary examination, but continued his study until December when he received an offer to go to California on business. Within a week's time he departed, taking a steamer for

Panama. He was detained in California longer than he anticipated, and filled up his time in reviewing his legal studies, and finally concluded to remain there and engage in practice in San Francisco, having been admitted to the bar in Sacramento a few days after his arrival there. But just as he had finished the business which called him there and before he had fairly started in practice, he received a letter from Mr. Boutelle informing him that Mr. Noyes had decided to devote himself exclusively to railroad affairs, and inviting him to return east and take their office and business. Other circumstances made this course seem advisable, and he accordingly left for home early in April, 1851. In June following he took the office of Boutelle & Noyes and began practice in Kennebec and Somerset counties.

A circumstance, that was in a measure accidental, soon gave him good standing at the bar of the last named county. Mr. Boutelle had been in the habit of pleading specially, whenever such a course was available, and he impressed upon his students that that was the only scientific method. Mr. Drummond found it something analogous to mathematical analysis and hence studied it carefully, especially as the Legislature had removed such features of it as permitted its abuse. Just as Mr. Drummond began practice the "search and seizure" clause of the "Maine Law" was beginning to be enforced. Thereupon, in Somerset county an action of trespass was brought against the officer every time he served a warrant, until almost every lawyer in that county had one or more of such cases. Mr. Drummond was employed in the defense and in every case pleaded specially, justifying under the warrant issued to the officer. With one or two exceptions the lawyers of that bar had utterly ignored special pleading, and in consequence they were taken by surprise and found themselves drifting upon an unknown sea. One case (reported in the Maine Reports) was carried to the Law Court, and the defense prevailed. Another case went to a jury upon issues, enough of which were found for the de-

feudant to give him judgment. This was carried to the Law Court, but before it was decided the proposal was made to dismiss all the cases without costs; this was accepted by the defendants, and the old cases were ended and no new ones brought. Mr. Drummond, however, acquired an undue reputation, undue because a simple procedure seemed wonderful to his associates, merely because they had not studied it, and, therefore, all the more so to the public.

Mr. Drummond was also equally fortunate in another cause, a legacy from his predecessors. A case arose in which the effect of a former judgment in a case between the same plaintiff and the servant of the defendant was in question. The case was new in its character in Maine. He made an exhaustive examination of the cases and prepared his argument with great care. Hon. George Evans was with him and spoke so highly of the argument that it gave Mr. Drummond a high reputation in Kennebec county. Praise from Mr. Evans was a passport to public confidence.

Mr. Drummond for several years was legal adviser for the town of Waterville. In the fall of 1856 he was nominated, in his absence and without his knowledge (for he expected the representative of the previous year would be renominated), as representative to the Legislature. He was elected by the largest majority then ever given to a representative in that town. He had been on the stump almost continuously from the 4th of July until the Saturday before election.

In the House Mr. Drummond was chairman of the railroad committee and served upon others. He took a very active part in the legislative proceedings and was in danger of losing or weakening his influence through too frequent speaking upon the many important questions then before the public, but in fact he grew stronger throughout the session. He was re-elected the next year and became speaker of the House after a very animated contest. He declined a second re-election in order to give his opponent for the speakership a clear field.

In 1860 he was elected to the State Senate from Kennebec, and during the session a vacancy occurred in the office of the attorney-general through the death of the incumbent. The caucus preliminary to filling the vacancy had been fixed for Tuesday evening. On Monday morning Mr. Drummond was solicited to allow the use of his name. He asked for brief time for consideration of the proposal. At noon he consented to accept, if the office came to him without solicitation. On the second ballot he was unanimously nominated. To this high office he was elected four successive times and declined a fifth election on account of the inadequacy of the salary in comparison with the duties to be performed in the office. An unusual number of criminal cases argued by him came before the Law Court, many of which arose out of the construction of the prohibitory liquor law. Also, there were more murder trials in the State during those four years of Mr. Drummond's incumbency in the office than during the preceding forty years.

In 1862 Mr. Drummond made a visit to Washington, and while there he saw and learned enough to convince him that no man dependent upon his own labor for support of himself and family, could safely enter the political arena and assume its anxieties, the possibility of unexpected changes, and its many uncertainties. He, accordingly, came to the conclusion that he would thereafter decline to be a candidate for any office not in the line of his profession. To this resolution he rigidly adhered, with the single exception of accepting an election to fill a vacancy in the State House of Representatives, when he was again chosen speaker. He served several years as city solicitor of Portland after he retired from the office of attorney-general.

In his professional career Mr. Drummond has been entrusted with many cases of great importance and has had interests of large magnitude confided to his care. He has been counsel for several railroad insurance and other corporations: while almost every one of

the nearly sixty volumes of the Maine Reports since the thirty-fifth contains cases in which he was counsel, and in the Reports of the Supreme Court of the United States are several cases of great importance which were argued by him.

Mr. Drummond has won extended and exalted fame as a Mason. He joined Waterville Lodge in 1849 and was its master in 1858-59. He was grand master of the Grand Lodge of Maine from 1860 to 1863, was for two years at the head of the Grand Chapter and Grand Commandery of Maine and for one year at the head of the Grand Council of Maine. In 1871 he was elected to the chief position of the General Grand Chapter of the United States, and in 1880 was grand master of the General Grand Council of the United States, holding each office three years. He was provincial deputy grand master of the Royal Order of Scotland under the late Albert Pike, and since Mr. Pike's death has been provincial grand master of that order.

He received the degree of the Scottish Rite in 1861-62 and in the latter year the 33d degree was conferred upon him, whereby he became an honorary member of the Supreme Council of the Northern Jurisdiction of the United States. He was immediately elected lieutenant grand commander and was re-elected in 1863 and 1866. In 1867, upon the union of the Supreme Councils, previously existing, he was elected grand commander of the United Supreme Council, the highest office in the gift of the fraternity. He was re-elected in 1870, '73 and '76, but declined further service. This office involved a large amount of correspondence with all parts of the world.

He has rendered, perhaps, the greatest service as a member of the committees in the various Grand Bodies. As chairman of the committee on Masonic Jurisprudence in the Grand Bodies of Maine, and in the National Bodies, he has done more than any one else to shape the polity of the order in the State and Nation. In his own Grand Lodge he has performed since 1865 the duty of reviewing the

proceedings of the other Grand Lodges—over fifty in number. His report thereon has often been more than 200 pages. He has also performed a similar labor for the Grand Chapter, Council, and Commandery.

Mr. Drummond is a man of strong, determined and somewhat aggressive characteristics. A conviction once firmly fixed in his mind, it is not an easy task to change or weaken it. But he is withal kind-hearted, generous and sympathetic, and unselfish of his time and effort in aiding others, particularly worthy young men. Endowed by nature with a commanding figure, and with remarkable physical and mental power, he still, after having passed three score and ten years, presents a fine example of vigorous manhood.

JOSIAH HAYDEN DRUMMOND, Jr., of Portland, Me., was born in Waterville in that State on March 5, 1836, and is a son of Josiah Hayden Drummond (a sketch of whose life precedes this page) and Elzada Rollins (Bean) Drummond. He was taken to the city of Portland by his parents when he was four years old, and began his education in the schools of that city. Entering Colby University he graduated with credit in 1877. Following in the professional footsteps of his father, he took up the study of law immediately after graduation and was admitted to practice in the courts of the State of Maine in October, 1879. He at once became a partner in business with his father, and the law firm of Drummond & Drummond still continues. In October, 1882, Mr. Drummond was admitted to practice in the Circuit Court of the United States for the District of Maine, and in March, 1885, was admitted to practice in the Supreme Court of the United States.

Mr. Drummond is an ardent lover of his profession, a persistent student, and possesses mental powers over which he has complete mastery. He has great capacity for gaining a clear and correct conception of any case under-

taken by him, and so marshaling his evidence and his arguments as to bring out every point of strength in favor of his client. Few if any of the younger men at the bar of the State of Maine, after twenty years of practice, stand higher to-day in the estimation of their brethren, or enjoy a greater degree of public confidence than Mr. Drummond.



JOSIAH H. DRUMMOND, JR.

In his practice he has given particular attention to the law relating to corporations. He has prepared the abstract of the laws of Maine for "The American Corporation Legal Manual" annually since that work was first issued. He has argued before the Law Court several important life insurance cases, his work being of such a character as to give him high standing with the court in that class of litigation. The fidelity, accuracy, and completeness with which he always treats the decided cases in making his arguments are generally well known.

Mr. Drummond is an earnest Republican, but with little inclination to desert or neglect his profession to seek for public office. He represented Portland in the Maine House of Representatives in 1891, and was elected to the State Senate from Cumberland county in

1896 and 1898 for terms commencing January, 1897 and 1899. In the House he served on the committees on legal affairs, on banks and banking, and on the library. In the Senate he served both terms on the committees on the judiciary, on banks and banking, and on claims.

He married September 17, 1883, Sarah Tuttle Blake, of Jersey City, N. J., and they have five sons and one daughter.

CHARLES F. LIBBY, a prominent attorney of Portland, Me., was born in Limerick, York county, in that State, on the 31st of January, 1844, and is a son of James B. Libby, also a native of that place. James B. Libby was during a large part of his life one of the well known firm consisting of himself and two brothers, engaged in the wood commission business in Portland and after 1860 in New York city, where the house is still in existence. James Libby married Hannah Catharine Morrill, who was born in Kennebunkport, Me., in 1813, and died in Portland May 2, 1879; her husband died March 26, 1889. This Libby family, in common with all others in this country, trace their ancestry back to the original immigrant, John Libby, who was born in England in 1602, and came over in 1630, in the employ of Robert Trelewney, who, with Moses Goodyear, secured a patent for Richmond Island and a large area of the Maine mainland. The father of James B. Libby, and grandfather of the subject, was Ellis Libby, who was born in Scarborough, Me., on March 12, 1790, and married Jane Jewell; they had eight children, of whom James B. was the third. He was a leading business man, president and director of many important corporations, including steamship lines, and lived an honorable and useful life.

Charles F. Libby was given ample opportunity to obtain a liberal education, of which he availed himself with energy and determination. After graduating from the Portland High School he entered Bowdoin College where

he was graduated with honors in 1864. Having already determined upon following the profession of law, he began study soon after leaving college, in the office of Fessenden & Butler, in Portland, and finished in the Columbia Law School, New York city. He went abroad immediately after his admission to the bar in 1866 and continued his studies in Paris and Heidelberg during two years. He returned in 1869 with greatly enlarged experience of the world and a store of useful information and knowledge.

Mr. Libby began practice in Portland with Judge Symonds which continued until the latter was appointed to the Superior Court bench. His next business association was with the late Hon. Moses M. Butler, which continued until Mr. Butler's death, when he again became associated with Judge Symonds and thus continuing until 1891. In 1897 the existing firm of Libby, Robinson & Turner was formed, of which he is the senior. As a lawyer Mr. Libby early took a prominent position in the Cumberland county bar. His natural talents and acquired ability were soon manifested in the broad field of actual practice and many cases of importance were intrusted to his care. In these he has met with a flattering degree of success.

Mr. Libby is an earnest Republican and his personal popularity and oratorical gifts long ago led to his recognition as one of the political leaders. He began his public career as city solicitor, holding that office in 1871 and 1872. In the last named year he was elected county attorney, an office which he voluntarily resigned in 1878, leaving an enviable record of duty well and fearlessly performed.

In 1882 Mr. Libby was elected mayor of the city of Portland, and the varied and important interests of the community were never more carefully and efficiently guarded than during his administration. While Mr. Libby at this time would cheerfully have retired from public life to follow the more congenial paths of his profession, his friends in the Republican party gave him the nomination for the State

Senate in 1888 and he was, of course, elected. His re-election for another term followed in 1891, in which year he was honored by his fellow legislators with the presidency of the Senate, a position which he filled with dignity and courtesy. In his choice for the presidency no nomination was made against him by the opposite party, a fact for which there was no precedent.



CHARLES F. LIBBY.

Mr. Libby's business ability has been recognized in the community and he has been asked to accept a number of trusts of importance. He is attorney for the First National Bank of Portland, for the Portland Trust Company, the Portland Street Railway Company, the International, and Portland and Maine Steamship Companies, and various other corporations.

Mr. Libby was active in organizing the Maine State Bar Association and served efficiently as its president from 1891 to 1895 inclusive. His interest in educational affairs has always been of an intelligent and earnest character and its appreciation by his fellow citizens is shown in his long period of service from 1869 to 1882 on the Portland School Committee. He is now and has been for many

years president of the Overseers of Bowdoin College.

In his personality Mr. Libby is one of the most genial of men and his unflinching courtesy, rigid integrity, and comprehensive ability have won for him a large circle of trustworthy friends.

Mr. Libby was married to Alice Bradbury, daughter of the Hon. Bion and Alice Williams Bradbury, of Eastport, Me., and they have two living children, a son and a daughter.

JOSEPH A. LOCKE, attorney, Portland, Me., was born in Hollis, York county, Me., December 25, 1843. He is a descendant in the sixth generation from John Locke, of Hampton, N. H., who came from Yorkshire, England, in 1644, it is believed, and first settled in Dover, N. H., there becoming a land owner. Through both his father, Stephen Locke, son of Caleb Locke, of Hollis, and his mother, Lucinda Clark, daughter of Charles Clark, of Hollis, Mr. Locke is a representative of the fourth generation in descent from Sarah Pepperell, the accomplished and beloved niece of Sir William Pepperell (and daughter of Andrew Pepperell), and also from the historic Major Charles Frost, of Kittery.

Stephen Locke, father of the subject, was for many years one of the old-time schoolmasters, and later in his life a builder and contractor. He erected among many other structures of importance the city hall of Biddeford, and the mills at West Warren. He is a man of high character and excellent ability. He is still living with his son, Ira S. Locke, in Portland, Me. (aged eighty-four years, January 17, 1900).

In his early childhood Joseph A. Locke moved with his parents to Biddeford, where he fitted for college, graduating from Bowdoin College in 1865 with honor, being the salutatorian of his class. He taught in the Portland High School the first two years after his graduation, having charge of classes in Greek, Latin, chemistry and mathematics; and while

teaching he was pursuing his law studies. He then entered the law office of Davis & Drummond (Judge Woodbury Davis and the Hon. Josiah H. Drummond), and was admitted to practice in the State courts in 1868 and in the United States courts in 1869.

He settled in Portland, remaining a short time with Messrs. Davis & Drummond, and in October, 1868, opened an office. Here, by close application to business, and the care and



JOSEPH A. LOCKE.

fidelity with which he attended to all matters entrusted to his charge, both in office work and the trial of cases in the courts, he acquired a large and successful law practice, commanding the confidence of all with whom he came in contact. In 1880 he formed a co-partnership with his brother, Ira S. Locke, under the firm name of Locke & Locke, which still continues. They have an extensive general practice, are trustees of several large estates, and have the charge of many trust funds.

Mr. Locke is an earnest Republican and has frequently been honored by his fellow citizens with positions of trust. He was twice elected representative from Portland to the State Legislature, namely, for the sessions of 1877 and 1879, serving as a member of the judiciary

committee in both sessions, and also as a member of the library committee in 1877. The State election in the fall of 1878 for the session of the succeeding year was a very close one throughout the State and especially in Cumberland county; and out of the five representatives to the House from Portland Mr. Locke was the only Republican elected. On the organization of the House of Representatives in 1879 he was the Republican nominee for speaker, but was defeated by the combined vote of the Democratic and Greenback representatives. At the State election in that fall he was elected a senator from Cumberland county, being the only Republican nominee for the Senate from Cumberland county who received his certificate of election from the Governor and Council. This was the famous session of the Legislature of 1880.

From the first meeting of the Senate until its final organization, when he was elected its president, he was the leader in that body on behalf of the Republican party in opposition to the organization of the Senate by the members of the Democratic and Greenback parties; and by his timely written protests, duly presented in session, while they were attempting to perfect an organization, paved the way to bring the question involved, as to who were the legally elected members of the Senate, before the Supreme Court of the State for its decision. This is the only instance since the organization of the State that a member has been elected president of the Senate in the first term of service therein. Mr. Locke was the youngest man who ever occupied the chair. He was returned to the Senate in 1881, and re-elected its president. This was the first session of the Legislature following the amendment to the Constitution providing for biennial elections; consequently Mr. Locke remained as president of the Senate, making him the second civil officer in the State, for three years, and until the organization of the Legislature in January, 1883, when he was elected a member of the Governor's Council. This position he held by subsequent election for four years, serving all

that period as chairman of the committee on accounts, and of the committee on education, and was on the committees on military affairs and on public beneficiaries. In this position and under these several responsibilities Mr. Locke was forced to bear a large share of the burden of work. From this he did not shrink, bringing to bear his former legislative experience, his legal ability, and his conservative judgment. Since his retirement from the Senate he has devoted his energies mainly to the interests of his numerous clients and to the trusts that have been placed in his hands.

Mr. Locke has always taken a deep interest in educational affairs. During several years after his period of teaching the high school he was a member of the School Committee of Portland. He has for many years been a member of the Board of Trustees of Maine Wesleyan Seminary and Female College at Kent's Hill, Me., and the last nineteen years has been president of the board. That institution has greatly profited by his judicious counsel.

Mr. Locke has been interested more or less in the various historical, educational and social organizations of Portland. He is a member of the Maine Historical Society, the Genealogical Society, the Portland Natural History Society, and of the Masonic fraternity. He first became a Mason in 1866, receiving the Blue Lodge degrees in Dunlap Lodge in Biddeford, and became a member thereof. Having decided to make his home in Portland, he transferred his membership to Portland Lodge No. 1, the oldest lodge in the State, acting under charter issued in 1769, and at the next election was chosen senior warden and afterward worshipful master, occupying the chair for the years 1871 and 1872. In June, 1877, honorary membership was conferred upon him; and in 1878 he was elected a member of the Board of Masonic Trustees.

Mr. Locke has at different times been highly honored by this large and strong fraternity. He was most eminent high priest of Greenleaf Chapter No. 13 in 1870; eminent commander of St. Alban's Commandery No. 8, for the years

1877 and 1878; grand high priest of the Grand Chapter of Maine for the years 1881 and 1882. In the Grand Commandery of Maine, in May, 1887, he was elected from the floor to the position of deputy grand commander, and elected right eminent grand commander for the years 1888 and 1889. While occupying the latter position at the Triennial Conclave of the Grand Encampment of the United States, held in Washington, D. C., in 1889, he was elected chairman of the ritual committee to revise and correct the ritual of the order throughout the country; and, so well was the work done, that at the next Triennial Conclave, held in Denver, Col., in 1892, the report of the committee was accepted and the ritual presented by it unanimously adopted without a single change being made, although it was the general opinion of the members of the order throughout the country before the convence that no ritual could be presented which would be adopted. In May, 1897, he was elected grand master of the Grand Lodge of Maine, and re-elected the next year. At the present time Mr. Locke is grand junior warden of the Grand Encampment, Knights Templar of the United States.

Mr. Locke has also been honored in the Scottish Rite or so-called degrees of Masonry. He was for eleven years thrice potent grand master of Yates Lodge of Perfection in Portland, and afterward commander-in-chief of Maine's consistory, thirty-second degree, for eight years; and in September, 1884, he received at Detroit the honorary grade of sovereign grand inspector-general of the thirty-third and last degree.

Mr. Locke married, August 27, 1873, Florence E. Perley, daughter of Joseph H. Perley, a well known merchant of Portland. They have four children now living, namely: Grace Perley Locke, John R. Locke, Allen S. Locke, and Joseph A. Locke, jr.

SETH L. LARRABEE, Portland, one of the most prominent members of the Maine bar, is a native of Scarborough, Me., where he was born January 22, 1855. His ancestry performed an honorable part in the settlement and wars of the new country in early years, and is traceable back to 1660. Members of the family served with credit in the Revolutionary war and left a heritage of honor to



SETH L. LARRABEE.

their descendants. The father of Seth L. was Jordan Larrabee, who also was born in Scarborough, and his mother was Caroline F. Beals.

The boyhood of Seth L. Larrabee was passed on the home farm, where he learned the value and disciplinary influence of arduous toil. Attending the district school, he later fitted for college in the Westbrook (Me.) Seminary from which he was graduated in 1870. After taking a year's vacation, he entered Bowdoin College and was graduated with the class of 1875. During his college course he taught several terms in common schools, and after his graduation he taught languages one year in Goddard Seminary, at Barre, Vt.

In fulfillment of his early formed determination to become a member of the legal profession, Mr. Larrabee entered the office of Strout

& Gage, in Portland, Me., and was admitted to the bar in 1878. Opening an office in that city, his varied talents soon commanded attention and gained for him a large practice. For twenty years past his commanding figure, and his masterly conduct of cases have been well known in the Maine courts.

Mr. Larrabee is a Republican and his influence in political circles, his ability to win and keep friends, and his social popularity have combined to render him an important factor in his party, to which he has rendered important services. In 1880 he was elected register of probate for Cumberland county, which office he held nine years. He was chosen city solicitor for the city of Portland in 1891 and 1893, and in 1895-97 was elected to the State Legislature. In the last named year he was unanimously nominated and unanimously elected speaker of the House, an honorable position which he filled with dignity, ability and charm of personal manner.

Mr. Larrabee's business qualifications and judgment have led to his selection for a number of responsible trusts. For many years past he has been an influential member of the Portland Board of Trade. He was one of the originators of the Cases, and the Portland Loan and Building Associations, in both of which he is director, treasurer and attorney. He was an original incorporator and is president of the Portland and Yarmouth Electric Railway Company. He was one of the founders of the Chapman National Bank of which he is vice-president and director. He was instrumental in chartering and founding the Mercantile Trust Company, of which he is trustee and attorney. To him also has been confided the care of a number of large estates. In all of these positions Mr. Larrabee has exhibited the traits and qualifications that never fail to endow the conservative, prudent and enterprising man of affairs. Mr. Larrabee served two years as captain of the First Maine Battery of the State Militia. He is a member of the Masonic order, a Knight of Pythias, and a mem-

ber of the leading social and political clubs of Portland.

Mr. Larrabee was married October 21, 1880, to Lulu B. Sturtevant, of Scarborough. They have two children—Sydney B., aged seventeen years, and Leon S., aged fifteen.

WILLIAM T. HAINES, attorney-general of Maine, is a self-made man. He is a graduate of the Maine State College (1876), and the Albany Law School in 1878. In May, 1879, he settled at Oakland (then West Waterville), Kennebec county, Me., and commenced the practice of law. Here he remained until October, 1880, when he moved to Waterville, where he has since resided. Soon after coming to the bar Mr. Haines obtained a good clientele, and was very soon found in the courts trying his own cases. In 1882 he was elected county attorney for Kennebec county, which office he held for two terms. He has always been a Republican, and has taken an active interest in every campaign since he has been a voter, and has served his party several campaigns upon the stump. He was elected to the Maine Senate, from Kennebec county, in 1888, and again in 1890. As a legislator he put forth many new and reform measures, among which may be mentioned the registration bill, for the registration of voters in cities, which is known by his name, and for which he received both praise and abuse, as it was passed by a strict party vote at the end of his second term, having been defeated in 1888; but now that the measure has been tried all are compelled to admit that it is a great improvement on the old method of registering voters in cities. He also introduced and carried through the constitutional amendment requiring an educational qualification for voters, which was adopted by the people in the election in 1892. Perhaps the most prominent of his legislative work related to his efforts to pass a statute

for the regulation of railroad rates and fares, for which he made a most determined fight during both his terms in the Senate, and in both of which he was unsuccessful, yet none can deny that his efforts in this direction did a good deal towards creating public sentiment to demand mileage tickets at two cents per mile, which was promised by the railroads before the debate was closed and the last vote



WILLIAM T. HAINES.

taken on his bill in the Senate. As a legislator, Mr. Haines was generally successful, being a ready and forcible debater, and one who makes firm friends of his associates.

He has done a good deal, both in the Legislature and out, to assist his alma mater, having served upon the Board of Trustees since 1882. He was chairman of the committee, and had charge of the construction of both Coburn Hall and Wingate Hall at the State University, and has been secretary of the trustees since 1886, and as trustee has taken a great interest in the same; and to his efforts and co-operation is due the establishment of the law school in Bangor.

In 1892 Mr. Haines was candidate for attorney-general, but was defeated by Hon. F. A. Powers, of Houlton. But in 1896 he again

made a contest for the position. It was one of the hottest political fights ever known in the State, there being five candidates in the field, but he was triumphantly nominated and elected.

As a citizen he has been prominent in many of the new enterprises in Waterville. He organized, and with others started the Waterville Loan and Building Association, for which he is now attorney and one of the executive board of trustees; also the Masonic Building Company, which erected the Masonic building on Common street. He is also a member of the Maine Sports-men's Association, and has always taken a great interest in the propagation and protection of fish and game.

Mr. Haines promoted the system of water works in the towns of Newport, Machias and Oakland, and of late he has become largely interested in the wild land in northern Maine.

But with all his connection with business, the best part of his energies and time has been devoted to the practice of law. As an attorney, he enjoys the confidence of the community both for integrity and ability. In the management of his cases he is a most untiring worker. By constant application to business he has acquired a large clientage. Through diligent study and steady practice he has become one of the most brilliant members of the bar in Maine. He has been engaged in many important cases which have become part of the legal history of the State. His success as a lawyer and his general popularity are features characteristic of his earnest nature. Of good presence, a clear and forcible speaker, argumentative to an extreme degree, he is a recognized power with the people and in the councils of the party to which he belongs.

When county attorney, he tried three murder cases in seven days, obtaining conviction in all. Kennebec county saw three of her citizens who had taken life, in State's prison, two for life and one for seven years, in a little over two months from the date the first crime was committed. As Judge Whitehouse, who presided at the trials, remarked, this was admini-





istering criminal law with certainty and celerity, and, he hoped, without too much severity. Mr. Haines is a great admirer of his native State, and particularly of his adopted city and the Kennebec Valley. At the meetings of the State Board of Trade, of which Mr. Haines has been a prominent member, he has always advocated Maine, for Maine people, as a place in which to invest their money and their energy, a good State in which to be born, in which to live, and in which to die.

WILLIAM PITT FESSENDEN¹ was the eldest son of Gen. Samuel Fessenden, and was born at Boscawen, N. H., October 16, 1806. The name which he received is indicative of his father's political opinions, as Pitt, then at the height of his power and reputation as premier of England, was the idol of the New England Federalists. His father was a son of William Fessenden, the first minister of the first parish in Fryeburg, Maine, graduated from Dartmouth College, studied law and practiced most of his life in Portland. He was an excellent lawyer and a man of fine literary and scholarly tastes. In politics he was a Federalist and later a Whig. He died in Portland, March 19, 1869. The childhood of the son was spent at his father's home in New Gloucester. He was early studious and unusually precocious. In 1819, before he was thirteen years old, he entered Bowdoin College, and was graduated there with honors in 1823.

While Fessenden was in college his father had moved from New Gloucester to Portland, so that when his college course was completed he came to his father's new home, and began to study law in the office of Charles S. Davis, at that time one of the leading lawyers in Maine. He was a law student for four years, part of the time in the office of his uncle, Thomas Fessenden, in New York, and in 1827,

being then twenty-one years old, he was admitted to the Cumberland bar. He had received an excellent drill, especially in equity, then a new branch in the jurisprudence of Maine. After his admission he opened an office in Bridgton, Maine, where he remained about two years. He then returned to Portland, and became a member of his father's firm, but this arrangement not proving satisfactory he went to Bangor, where he stayed until 1832, when he again returned to Portland, and for the rest of his life made his home in that city. He was married on the year of his return to the youngest daughter of James Deering.

Fessenden soon took high rank at the bar, and developed much of the true spirit of the lawyer. He was fond of the profession, and in many respects preferred it to holding public position. He enjoyed a large although not specially lucrative practice, and long before his election to the Senate he was recognized as one of the leading lawyers of the State.

He early took an interest in politics. In 1827, when only twenty-one years of age, he delivered to the young men of Portland a Fourth of July oration, in which he clearly showed the bent of his mind toward public affairs. In 1832 he was elected to the Legislature as a Whig, having been offered and having declined the Whig nomination for Congress. Service in Congress does not seem to have been then considered the honor it has since become. An appointment to the bench was much preferred, and on two separate occasions seats in the United States Senate were resigned for positions on the Supreme Court of Maine. In 1840, however, he accepted the congressional nomination and was elected; but service in the House of Representatives did not seem to suit his tastes and although re-nominated he positively declined to run. Ten years later, in 1850, he was again elected to Congress, but lost his seat through an error in the returns.

In 1843 and 1845 the Whigs in the Legislature gave him their votes for the senatorship, and in 1853, when the term of James W. Brad-

¹ Condensed from biography read by Richard Webb before the Maine Historical Society February 25, 1899.

bury, who was a Democrat, expired, he again received the support of his party. But the Legislature of 1853 failed to elect, no candidate receiving a majority of the votes cast, and adjourned leaving the vacancy to be filled by the Legislature to be elected in the coming fall. Now in the political campaign of that year a serious split occurred in the Democratic party so long dominant in Maine. A considerable faction, calling themselves "Independent Democrats," bolted the regular nominations and supported, as their candidate for the governorship, Anson P. Morrill.

There was no election of governor by the people, and it fell, therefore, upon the Legislature which met in January, 1854, to elect both a governor and a senator, with the balance of power resting in the handful of members who were the supporters of Mr. Morrill.

Mr. Fessenden had been at all times a consistent Whig, and was the most prominent man of that party in the State, and was also in favor at that time with the so-called "Independent Democrats." He was elected governor by a vote that gained the support of the Independents and also retained the full Whig vote.

At the time of Mr. Fessenden's election to the Senate the famous Kansas-Nebraska bill was in progress, the bill providing for the organization of the territories of Kansas and Nebraska and the repeal of the Missouri Compromise. Into this exciting debate he at once plunged, delivering his first speech on the evening of March 3, 1854. He spoke without notes, and the flow of his eloquence was not disturbed by the frequent interruptions of such veteran debaters as Cass, Douglass and Butler. His speech won from his fellow senators immediate recognition of him as a debater of more than usual ability, and drew public attention to himself as a new and fearless leader of the small band of anti-slavery men then in Congress.

But the Missouri Compromise was repealed. In a Senate of sixty-two members only fourteen voted against the bill, as had so often

happened before the demands of the South were granted. Instantly the Republican party sprang into being, taking for its creed opposition to the extension of slavery in the territories, while "popular sovereignty" became the rallying cry of the Democrats. The Whig party was dead, and although many Whigs became Democrats, many Democrats joined their old opponents in becoming Republicans. Then came the fierce and bitter struggle for the possession of Kansas, fought out largely in hand-to-hand encounter upon the soil of that new territory, the attempt to fraudulently force a slavery constitution upon the Kansas people, the final defeat of the pro-slavery party and the admission of Kansas as a free State. As the Southern leaders saw power slipping away from their grasp, and realized that not only the balance of power never could be restored, but that the time was at hand when the control of the government in all its branches would pass to enemies of Southern institutions, angrier and more arrogant grew their demands, and firmer and more determined became the Northern resistance. The Supreme Court issued the Dred Scott decision, John Brown attempted to capture Harper's Ferry, Abraham Lincoln was elected to the presidency, the Southern States passed ordinances of secession, and active preparations for war began.

Mr. Fessenden's first term in the Senate was therefore crowded with exciting and momentous events, and in all the legislative struggles of the time he bore a conspicuous part. The prominent position he had assumed at the beginning he held to the end as the little band of champions for freedom grew greater. In debate he was always ready. Nobody could match him in immediate and incisive reply, and his words were swift and sharp. In sentiment he was thoroughly anti-slavery. It was his inheritance and he was faithful to it.

When the Republican party came into power, to Mr. Fessenden was assigned the difficult and important position of chairman of the finance committee. Here he was most conspicuous in sustaining the national credit during the war.

He prepared and carried through the Senate all measures relating to revenue, taxation and appropriations, and so much confidence was reposed in him, and so great was his influence, that his bills almost always became laws substantially as he had reported them. As declared by Sumner, "all that our best generals were in arms, he was in the financial field." In one important instance he was outvoted. He objected to the Legal Tender bill, and he stated his objections in one of his ablest speeches. The correctness of his views was subsequently apparent, and his predictions in the matter were fulfilled.

At the darkest hour of the war, in June, 1864, Secretary Chase resigned the portfolio of the Treasury. To fill the vacancy, David Tod, of Ohio, was nominated, but he immediately sent a telegram to the president declining the office. The nomination of Mr. Fessenden was then sent to the Senate, and was at once confirmed. Mr. Fessenden was completely surprised. He was at the White House conferring with the president upon the situation of affairs in the Treasury Department when Mr. Lincoln told him that his own nomination was on the way to the Capitol. He at once hastened to the Senate Chamber to protest against it, but the nomination had been confirmed before he arrived. He sought, however, to decline, but the president insisted that he must accept. Influential senators and members of the House promised to aid and support him with such financial legislation as he might wish, and public opinion, so far as it was made manifest in resolutions of chambers of commerce and boards of trade and in the editorials of leading party newspapers, called upon him to take the office. So he resigned his seat in the Senate, and became secretary of the treasury.

Mr. Fessenden's career as secretary of the treasury has been too often referred to in a parenthesis, yet during the right months that he held this office he quickly and unostentatiously performed the most important public services of his life up to that time. When he

assumed the office on July 5, 1864, the condition of affairs was, as he afterwards modestly described it in his report to Congress, "peculiarly embarrassing."

Bonds which had heretofore been issued had been sold in most instances to banks, capitalists and syndicates, and by them placed upon the market, but it now appeared that this market would take no more except at a ruinous discount. Mr. Fessenden realized, however, that another market for government securities might well exist outside the stock exchanges of the great cities, in which market the people themselves might deal directly with the government without the intervention of brokers and middle men. In the people of this country he had full confidence. He firmly believed in their determination to put down the rebellion at any cost or sacrifice. He, therefore, determined to offer, as a great popular loan, the "Seven-thirty" bonds then recently authorized. The loan was thoroughly advertised and opportunity given to every one to subscribe. The plan proved a pronounced success, and the "seven-thirtys" became very popular almost immediately. Money flowed into the treasury in a constantly increasing stream, and the financial embarrassment of the government was soon relieved.

When Mr. Fessenden left the Treasury in March, 1865, to again take the seat in the Senate to which the Legislature of Maine had re-elected him, the clouds of eight months before had disappeared. Threatened bankruptcy had been averted, and the financial affairs of the government had been conducted to a position of safety.

The congressmen returning to Washington in December, 1865, found an anomalous condition in that body. When Congress adjourned nine months before, the war was in progress, Confederate armies were in the field to be fought by the Union forces. In Washington the congressmen found many of the prominent leaders of the rebellion coolly demanding the seats in the Senate and House of Representatives to which their various "sovereign peoples"

had elected them. They had come to Washington not as petitioners, but as claimants, not as representatives of a defeated people to sue for mercy, but as if they themselves were victors, to dictate terms of peace.

The successive acts of the president which had ended in bringing about this anomalous condition had been watched with surprise and indignation at the North, and the president soon found that he had almost entirely lost the support of the Republican party which had elected him vice-president. When Congress met members were in no temper to listen to these claims for Southern representation. It was at once decided to appoint a special joint committee on reconstruction, a resolution to this effect passing the House even before the president's message was read, and to this committee should be referred all the questions and all proposed legislation relating to the restoration of the late Confederate States. This was the famous "Committee of Fifteen." It numbered among its members the leading men of both parties, and its chairman was Senator Fessenden.

The report of the committee, which was made after a thorough and careful examination into the condition of the Southern States, was anxiously awaited in the belief that it would shed light upon the darkness, and would point out the true path leading to a reunited nation. The report was written by Mr. Fessenden, and it has been said of it that with the possible exception of the Proclamation of Emancipation it is the ablest state paper of the period. With perhaps the same exception it is the most important. Clear and lucid in its style, admirable in its composition, faultless in its logic, convincing in its argument, thorough and complete in its treatment of the subject, and wise in its recommendations, it is a document upon which Mr. Fessenden may well rest his reputation for broad, intelligent, patriotic and wise statesmanship. The influence of the report was immense. It became the creed of the Republican party, and the settlement of the question therein proposed was

considered throughout the country as reasonable, practicable and just.

The committee's plan of reconstruction was through the Fourteenth Amendment which should be ratified by the Southern States as a condition of readmission. The Fourteenth Amendment was accordingly adopted by Congress in accordance with the suggestion of the committee, and in nearly the same form in which the committee had drafted it. It was at once ratified by the Northern States and also by Tennessee, and that State was promptly readmitted to representation.

Mr. Fessenden, although he had from his earliest days been an opponent of slavery, and had always been a true friend to the colored race, was not in favor of negro suffrage as a condition of reconstruction. When the proposed Fourteenth Amendment was before the Senate it was most forcibly attacked by Mr. Sumner because it did not grant universal suffrage, and Mr. Fessenden in his reply contended that it was in all respects better to leave the question of suffrage wholly to the States, holding out to them, however, the progress of increased representation whenever they should make suffrage universal. Negro suffrage might thereby appear as for the interest of the South, and the negroes would in time be enfranchised by act of the States themselves. Had the negro received the right from the State, he would have been much more likely to have been protected in its exercise.

Mr. Fessenden was now at the height of his power and influence and was the recognized leader of his party in the Senate. He had the respect of his opponents, and calumny and slander had spared him. Had death here ended his career the mourning would have been far more general and sincere than that which actually occurred two years later, and his memory would have been far more warmly cherished by his contemporaries than has been the case. But another great public service remained for him to perform—to vote "Not Guilty" on the impeachment of Andrew Johnson. By so doing he forfeited all his pop-

ular support, lost the greater number of his political friends, and ceased to be a party leader. For the first time in his life he was subjected to general and unmitigated abuse, much of it coming from those who had long looked to him for leadership.

Among the leading political opponents of the president was Senator Fessenden. No two men could be more unlike. In education, character, intellect, habits of thought, manner and political opinions they were in pronounced and unreconcilable opposition. They had practically nothing in common, and for Johnson's character Fessenden had a supreme contempt. Yet while the Senate was sitting as a Court of Impeachment, Mr. Fessenden realized that his duties were then judicial and not political, and that he must base his decision upon the articles presented and the testimony offered in support of them, not upon anything outside of the record. Personal and political considerations must be wholly disregarded.

The vote of the Senate was thirty-five for conviction and nineteen for acquittal, Mr. Fessenden voting with the minority, and since the necessary two-thirds had not voted "guilty," the president was not convicted. A change of a single vote given for acquittal would have changed the result. Seven Republican senators voted "Not Guilty," and upon them was at once poured the vials of public wrath, since any one of them might properly be said to have prevented what the vast majority of the people so ardently desired.

Among the members of the House who voted for Impeachment was Mr. Blaine, and he has since said: "Soler reflection of later years has persuaded many who favored Impeachment that it was not justifiable on the charges made, and that its success would have resulted in greater injury to free institutions than Andrew Johnson in his utmost endeavor was able to inflict."

But Mr. Fessenden did not live until "soler reflection of later years" could persuade his detractors that they had been unjust to him. Before the anger which his action had aroused

had subsided, he died at his home in Portland, Maine, September 8, 1869. For the last ten years of his life he had not been well. In 1858 he had been one of the victims of a mysterious sickness which broke out among the guests of the National Hotel in Washington, from the effects of which he never fully recovered. So that when his final illness came, although at first thought to be not serious, it proved more than he could bear, and in about a week after he was first attacked he died. The suddenness of his death especially shocked the community in which he had lived, and there at least recent animosities were at once forgotten in the universal effort to do honor to his memory. The funeral services, which took place in Portland, were largely attended, crowds waiting on the steps from early morning until the church should be open. That the mourning was wide-spread was self-evident. Portland had lost her greatest citizen, the greatest man who had ever lived within her walls.

Mr. Fessenden was not what is called a popular man, that is, he did not have that quality best described, perhaps, as "personal magnetism," such as was possessed in such marked degree by that other distinguished son of Maine, who soon after occupied his seat in the Senate—Mr. Blaine. The people believed in his integrity, had confidence in his judgment, and admired his ability, but they were not inspired with a feeling of personal loyalty and of intense and unquestioning devotion to himself and his fortunes. He appealed to their consciences and to their common sense, and they followed him because they were convinced that he was right. He was reserved and dignified in manner, and was, perhaps, somewhat aristocratic, had little patience with those whom he considered bores, cared nothing for the patronage of his position, and was often short and sharp with office seekers. He had a supreme contempt, which he took no pains to conceal, for those who were in politics for what they could make, and expected reward for political services. These traits naturally made him

unpopular with certain classes, and gave him a reputation for being cold and unapproachable, but to those admitted to his personal friendship he was a most genial companion, and was by them held in such close affection as to prove such reputation undeserved.

Mr. Fessenden exercised in private life the same virtues that made his public career conspicuous. He had no private vices, such as dim the luster of the fame of Clay. He was always a perfect gentleman, courteous and refined.

He often seemed indifferent to public opinion. He was, perhaps, too much so. Yet he was peculiarly sensitive to praise and censure, the more so, doubtless, because he was unwilling to purchase the one, or seek to conciliate the other, by concessions which he regarded as venal. He was not the man to feel the public pulse before making up his own mind. He was governed by principle, not by policy. But in the application of principles no one was more practical. He was not a theorist, and while believing that moral principles should underlie legislation, he realized that perfect righteousness is not always attainable in this world, and that what may be theoretically right is sometimes beyond the power of human legislatures to enact.

His speeches are models of English style in the purity of their language and in the clearness of their composition. There are in them no metaphorical or other figurative expressions, no classical allusions or poetical quotations. They appealed to the reason and the common sense, not to the passions or the imagination. His was not an eloquence to move the masses, nor to win the applause of the galleries, but was most effective in bringing senators to his point of view. It was as a debater, not as an orator, that he excelled, and in the hurry and thrust of general debate he was without a peer.

Mr. Fessenden was vigorous and strong in intellect, keen and sagacious in judgment, practical in striving for results, but the great overshadowing elements of his fame and char-

acter were an integrity of purpose yielding to no temptation, persuasion or circumstance, and a moral and physical courage which no threatened disaster could shake. Utterly indifferent to danger, he trod only the straight path of rectitude.

Maine never had a son before of whom she was so proud. The Senate of the United States never bore upon its long distinguished roll a name deserving more honor. A model senator, with a character that was Roman in the highest sense, inflexible, yet courteous, pure without ostentation.

GEORGE F. McQUILLAN, of Portland, Me., was born in Naples, Me., April 18, 1849, and is a son of the Rev. Hugh and Elvira (Wight) McQuillan, both natives of Maine. He is a descendant of the McQuillans who entered Ireland with the earliest adventurers, and were the ancient lords of the northern coast and the surrounding district, from Dunseverick Castle, in County Antrim, near the Giant's Causeway, to Dunluc Castle. Dunseverick, which tradition says was built by the McQuillans, is now a heap of ruins; and Dunluc, though dismantled and crumbling with age, is still recognizable as a once strong and beautiful fortress. The McQuillans were lords of this part of Ireland as late as the reign of Queen Elizabeth. Their downfall dates from the marriage of the daughter of McQuillan, Lord of Dunluc, with MacDonnell, a chieftain from the opposite Scottish highlands. MacDonnell subsequently took possession of the Antrim territory, and got King James I. to confirm him as owner, since which the MacDonnells have been Earls of Antrim. The McQuillans, deprived of their possessions, became scattered through the northern part of the country, and thence to other parts of the world. John McQuillan, grandfather of Col. George F. McQuillan, was born in the north of Ireland. A man of fine form and good physique, he entered the English navy and in

time became a subordinate officer. He left the service of the English government at Portland, Me., and afterward settled in Gorham, marrying Olive Edwards, a native of that town, who was his second wife. John McQuillan died in Gorham in 1897, and his wife died there in 1820.

The Rev. Hugh McQuillan, the second child of John and Olive (Edwards) McQuillan, was born in Gorham, Me., July 18, 1803. After the death of his father he lived with and was educated by a gentleman in Windham, Me., until he was twenty-one years of age. He was ordained a minister in the denomination of Christian Baptists, and was engaged in evangelical work up to the time of his death, which occurred in Casco, Me., April 14, 1861. He was married in Naples, Me., in 1842, to Elvira Wight, who was born in Otisfield, Me., April 16, 1807, and was a member of an old family who settled in Dedham, Norfolk county, Mass., as early as 1636. Mrs. McQuillan was a noble woman, and after her husband's death kept her little family together and gave them the best educational advantages within her means. She died in Yarmouth, Me., November 27, 1881. Hugh and Elvira (Wight) McQuillan had three children—Rufus H., George F. and Liza A. Rufus H. was born in Naples, Me., November 18, 1844. When a youth of seventeen years he enlisted as a private, joining Co. G, 1st Regiment U. S. Infantry, May 24, 1862, and shared in the second battle of Bull Run, Antietam, South Mountain, the first battle of Fredericksburg, and the siege of Vicksburg from May 19 to July 4, 1863. During the last year he served as orderly to the general commanding at New Orleans. He was discharged at New Orleans, May 24, 1865. On leaving the army he engaged in the lumber business, having charge at different times of various lumber mills in the West. He went to Yarmouth, Me., to reside in 1880, where he engaged in the lumber business and opened a large hardware store. In politics he was a Republican and was deputy sheriff at Yarmouth under Sheriff Benjamin True for

two years. He also took a great interest in Grand Army affairs and was the first commander of the post at Yarmouth. He was a business man of the strictest integrity, and was one of the best known and most highly respected citizens of Yarmouth. On March 17, 1874, he married Alma B. Sawyer, in Raymond, Me. He died April 23, 1896, at Yarmouth, leaving his widow and three children—Hugh D.,



GEORGE F. MCQUILLAN.

George H., and Rufus Leroy. Liza A. McQuillan was born in Naples, Me. She resides in Portland.

Col. George F. McQuillan passed his boyhood days in the town of Raymond. He attended the common schools and fitted for college at North Bridgton Academy and Gorham Seminary. He graduated from Bowdoin in the class of 1875, his expenses having been partly paid by his mother and partly covered by what he earned by teaching school. His college course was marked by good fellowships. He took quite an interest in boating, being one year a member of the boating crew. After graduating from college he taught in high schools in the northern part of Cumberland county for two years. He then took up the study of law with the Hon. Bion Bradbury, of

Portland. He was admitted to the bar October 14, 1879, and practiced one year at Casco, serving that town as town clerk and supervisor of schools. He removed to Portland in October, 1880, where he has since been in active practice. Besides being a member of the bar of the State Court and the United States Circuit Court, Colonel McQuillan was admitted to the Supreme court of the United States at Washington, D. C. He has been for a number of years attorney for several towns in Cumberland county, and is well known as an able, conscientious and reliable lawyer. He was appointed June 6, 1881, judge advocate-general on the staff of Governor Plaisted with the rank of colonel, and served in that capacity until January 3, 1883. He has been the Democratic candidate for clerk of courts of Cumberland county, and ran well on the ticket, getting the party's full support. In 1892 he was the Democratic candidate for judge of the Probate Court for Cumberland county. On December 1, 1892, the law firm of Bradbury & McQuillan was formed, consisting of Col. Albert W. Bradbury and the subject of this sketch, and was continued until May 28, 1894, when Colonel Bradbury was appointed United States district attorney. Since that time Colonel McQuillan has been without an associate in his legal work. He has been for some time a Republican in politics.

In 1891 Colonel McQuillan was united in marriage with Mary F. Robie, daughter of Ex-Gov. Frederick Robie and his wife, Mary Olivia (Priest) Robie. Colonel and Mrs. McQuillan have one child, Harriet R., who was born March 14, 1894. Colonel McQuillan is possessed of scholarly attainments, and his judgment in educational affairs was recognized even before he entered on his legal career. While at college he was unanimously elected supervisor of schools at Raymond, Me., by the Democrats and Republicans.

EDWARD CLAYTON REYNOLDS, South Portland, Me., was born in Braintree, Mass., November 15, 1856. At the age of five years he was brought by his parents to Cape Elizabeth, Me., where in the common and high schools, and in a Portland business college he received his education. In 1874 he taught in the same business college and again during the school years of 1877-78. Having chosen the



EDWARD C. REYNOLDS.

law as his life work he studied two years and was admitted to the Cumberland bar in January, 1880. Opening an office in the city of Portland, he has continued in active practice there ever since. In 1884-86, while holding a government position, he took a post-graduate course in the Georgetown University Law School, at Washington, D. C., from which institution he received the degree of Master of Laws. In 1880 he was admitted to practice in the United States Circuit Court. In his profession Mr. Reynolds early won recognition as a lawyer of ability and good judgment. Candor and integrity have been the basis of all his intercourse with clients and he is generally trusted and honored by the community at large.

Mr. Reynolds is a Republican and has been the recipient from his party of several public

positions. He served on the Cape Elizabeth School Committee for six years. He was elected register of probate for Cumberland county in 1888 and re-elected in 1892, serving two terms of four years each, to the entire satisfaction of the community. In 1896 he was chosen to represent Cumberland county in the State Senate, and re-elected in 1898. During his last term in this body he was chairman of the committees on legal affairs and on military affairs. In the Senate Mr. Reynolds was an industrious and useful legislator. Guided by his conscience and laboring for what he believed to be the best interests of his county and the State, he received a large measure of commendation from his constituents.

In 1899 Mr. Reynolds received marked evidence of the esteem in which he is held in South Portland, where he has resided ever since his boyhood, by being chosen the first mayor of that newly-incorporated city, receiving the nomination from all parties and without opposition.

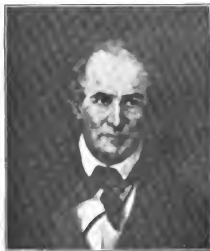
Mr. Reynolds is president of the Maine State Relief Association, of the Portland Club, of the Past Chancellors' Association, and of the Cape Elizabeth Soldiers' and Sailors' Monument Association. He is a director in and attorney for the Cumberland Loan and Building Association; a director in the Union Safe Deposit and Trust Company; a member of the Maine Genealogical Society, the Maine Historical Society, and of the Cumberland and the Maine Bar Associations. He is a Knight Templar Mason, and a member of the order of the Knights of Pythias, in which order he has held the highest office in the State, from which State he is a representative to the supreme body of this organization.

Mr. Reynolds is a pleasing and effective speaker and is often heard in public meetings of a political or social character. His prominent personal characteristics are his loyalty to his friends, sturdy adherence to the dictates of his conscience, and deference to the rights and wishes of others so long as they do not conflict with what he believes to be his duty.

He is a safe guide and counselor in law and industrious in promoting the causes of his clients.

WILLIAM ALLEN HAYES, of South Berwick, Maine, was born October 29, 1783, a descendant of John Hayes, a Scotch Puritan, who emigrated from Scotland in 1680, and settled at Dover, N. H. He died at South Berwick, on April 15, 1851.

He inherited the name of his maternal grandfather, Col. William Allen, a person of distinction in Gloucester, Mass., whose house in that town, built by himself, is one of the finest relics of colonial days; and whose father, Joseph, is still remembered as one of the most



WILLIAM A. HAYES.

distinguished citizens of old Gloucester, and as one of the chief creators of the industry which makes Gloucester the most important fishing town in the world. It was he who carried through the General Court of Massachusetts, of which he was a member, the grant of the township in Maine, named by him New Gloucester, the most valuable part of which, the magnificent intervalle farm, was occupied

by Col. Allen after his removal from Massachusetts.

He married Susannah Lord, who was a descendant of Nathan Lord, a pioneer of Kittery, Maine, in 1650; she was a sister of Dr. Lord, president of Dartmouth College. By this marriage were born thirteen children, the eldest of whom was John Lord Hayes,¹ whose sketch, with that of his son, William Allen Hayes, 2d, appears in this work.

William A. Hayes early in life developed a studious disposition, and from his immediate maternal ancestry, inherited a fine intellect, refined tastes, and a temperament in which were mingled those gentle characteristics which go to form the intelligent, conservative, charitable and genial man. After being prepared for college by an excellent tutor, he entered Dartmouth College, then under the wholesome administration of President Wheelock, whence he was graduated in due course, and with an honorable standing. Having a modest patrimony, his college course was not hampered by the pinching economy so necessary to many of his classmates, and was therefore easy in that it permitted him to indulge in favorite studies and a social life for which by nature he was distinctively fitted. He was far from the rustic youth, approaching with fear and reverence the courts of learning; the culture of the Allens and the sturdy probity of the Hayeses had tinged his nature with the elements of truth, refinement and nobility that stamp the born gentleman, and during his whole college course he was a favorite with all the classes, and particularly with the president.

By the advice of his uncle, Gen. Nathaniel Coit Allen, he took up the study of law in the office of Dudley Hubbard, in Berwick, and this same General Allen's letter introduced him to the family of General Lord, whose daughter became his wife; she was a woman highly gifted by nature and education, and eminently adapted to congenial consortship with such a man as Mr. Hayes.

He was duly admitted to the bar and soon acquired an extensive practice. Of him as a lawyer, it has been written: "Definite, accurate, and philosophical as his mind was, he could not fail to be a good lawyer, as he was, and he would have been an eminent one, if a more profitable business practice had allowed him to devote himself to arguing cases. His position was recognized by his occupancy for over twenty years of the presidency of the bar of his county; and when on some occasions he was called to hold the court in the absence of the judge, he acquitted himself with great acceptance. His brothers of the bar, in a letter of sympathy sent to him during his last illness, said: 'It is the happy lot of but few to sustain a professional career so long and successfully as you have, with so little of commission or omission to regret'; and the resolutions of the members of the bar of the county of York, passed after his decease, and entered upon the records of the District Court, refer to him as the 'dignified but courteous gentleman, the ardent yet paternal friend, the enthusiastic, accurate and successful lawyer, the pure-minded judge, the brother, *omni laude cumulatus*.' His most important public service was as judge of probate of York county, an office which he administered for over thirty years, holding courts monthly, without a single failure during that period. He was an ideal probate judge, no appeal ever having been taken from his decisions, while he went beyond his mere official duty in aiding the suitors in his court."

His other public service was to the academy, which he almost carried on his shoulders, as the president of its trustees; to the parish, in taking care of its funds; to Bowdoin College, as an overseer; and to the bank in his town, as its president; and in this relation, to the whole community in his section by the wise and liberal system of accommodation loans which he inaugurated.

¹ For sketches of John Lord Hayes and his son, William Allen Hayes, 2d, see Massachusetts division.

LEWELLYN BARTON, attorney of Portland, Me., was born at Naples, Cumberland county, Me., November 24, 1854. His early life was passed on a farm. At the age of fifteen years, he began an apprenticeship at the carpenter's trade, which occupation he followed with more or less regularity for twenty years. He was graduated from Bridgton Academy, at North Bridgton, Me., in 1880, and



LEWELLYN BARTON.

from Bowdoin College in 1884. While studying in these institutions, he met his expenses, with the aid of a scholarship, by teaching school in winter and working at his trade in summer. In college he always took an active part in literary and athletic exercises. He was one of the founders and supporters of the Bowdoin Literary Association. He received several rewards for oratorical and literary excellence in speaking and writing; was president of his college fraternity, member of the college jury, member of King Chapel choir and a college quartette, and one of the editors of the *Bowdoin Orient*. His defense, while a sophomore, at an indignation meeting of the students, of a luckless freshman, charged with a misdemeanor, was an early indication of the independence and moral courage that have

since distinguished him. The whilom freshman is now one of the editors of a prominent daily newspaper of this State and his pen is as caustic as of yore.

In the fall of 1885 Mr. Barton began the study of law with the well known firm of Nathan and Henry B. Cleaves, of Portland, where he remained two years. Just before being admitted to the bar he accepted, in August, 1887, the principalship of Bridgton Academy for two years. He remained there five years, during which period the school was never more prosperous. In the season of 1890, through his efforts and the generous contributions of two wealthy alumni, the grounds were enlarged and beautified. The school buildings were remodeled and enlarged, and the faculty was increased, and the course of study improved. The plans, specifications and labor were all furnished by Mr. Barton, he being the contractor.

In order to resume the study of law Mr. Barton resigned the principalship of the academy and in the following August was elected a trustee of the institution. He was admitted to the Cumberland bar at Portland in April, 1893. Before this he had the unique distinction of having been permitted by the presiding judge, who afterwards examined him for admission, to conduct a case in the Supreme Court. Immediately after his admission he became associated in the practice of law with Gen. Charles P. Mattocks. His first case involved questions which the court had not adjudicated. In a brief period after this he won reputation and standing by conducting several well known legal contests. One of the most important of these was that which arose out of the famous Naples school controversy, and involved the interpretation of the new school law for the first time and was of such interest that the whole State awaited the decision of the court of last resort, whereby the position of Mr. Barton and his associate was sustained in every particular.

Mr. Barton married, September 19, 1894, Grace Luette Newmann, of Portland, daughter

of Andrew Newman. They have two children, Lawrence Gould Barton, and Elizabeth Newman Barton.

Mr. Barton is a member of Cumberland Lodge, Independent Order of Odd Fellows, Bridgton, Me., and also of the Theta Delta Chi fraternity. He has always been deeply interested in educational affairs, and in his brief respites from school work he found time to compile and publish several books for use in public schools, his most ambitious work of this kind being an "Algebraic Review," which is quite extensively used. In politics Mr. Barton has been a Democrat from his youth, and has filled various public offices in his native town. In the fall of 1884, immediately after his graduation from college, he was elected representative to the State Legislature from the district including the towns of Naples, Raymond and Sebago. On that occasion he received a letter from President Joshua L. Clumderlain, of Bowdoin, congratulating him upon his election and predicting for him in politics a notable future, which would doubtless have been realized had not the community and State been so strongly Republican. During his term he served on the committee on mines and mining and the joint temperance committee. He took a conspicuous part in the discussions of the House, proving himself a ready and effective debater. He drafted the original druggists' bill, so called, which lacked only a few votes of passing the House, although the dominant party were very bitter against any temperance laws, on account of St. John's movement in the national campaign of 1884. At the close of the session Mr. Barton was chosen to present the customary vote of thanks to the speaker on behalf of the minority.

In 1888 Mr. Barton was the party candidate for registrar of deeds for Cumberland county, and in 1890, for register of probate in the same county. In 1891 he was chosen chairman of the Board of Selectmen for the town of Bridgton, a town which had been steadily Republican by a large majority for thirty years. In 1892 he was the Democratic candidate for rep-

resentative to the Legislature from the same town, and lacked only twenty-six votes of election, running far ahead of his ticket. At the opening of the Legislature in 1894, he was the Democratic candidate for State assessor, the only office he ever sought, and lacked only eight votes of election. In 1899 he was Democratic candidate for mayor of Portland. For the past few years he has taken an active part in every State and National campaign, speaking in various parts of the State. In 1893 he became secretary of the Young Men's Democratic Club of Portland. He declined a reelection to this office, having been chosen at the State Convention in June, 1895, a member of the State Committee for Cumberland county, a position in which he still serves. In 1898 he originated and successfully established the Maine Democratic Club, a State organization, and now the largest political organization in the State. He was elected the first president, a position he still holds. His political methods have always been clean if aggressive, and he has uniformly commanded the respect of his political opponents.

At one time Mr. Barton became interested in newspaper work. In the early part of 1897 he established the Portland Weekly Star, and in September of that year he bought the Maine Democrat, of Augusta, which he moved to Portland and consolidated with the Star. In December of the same year he established The Evening Star, as a penny daily, which in March, 1898, became the Portland Evening Courier.

FREDERICK NEAL DOW, president of the Evening Express Publishing company and identified with a number of Portland's foremost business corporations and financial institutions, was born in Portland, December 23, 1849, son of Neal and Maria Cornelia Durant (Maynard) Dow. His paternal ancestry is derived from John Dow, of Tynemouth, England (1540), whose grandson, Henry, came

to America in the first half of the seventeenth century, father of that Henry Dow, active in civil and military affairs of the colony of New Hampshire; and from Christopher Hall, who also came to this country in the first half of the seventeenth century. On the maternal side he is descended from Sergeant John Maynard, the famous lawyer of the Commonwealth period of English history, and from William Maynard, his mother's grandfather, an officer in the Revolutionary war, wounded at the battle of Bunker Hill, also from the Huguenot Durant family.

He was educated at Portland Academy, Portland High School, and the Friends' School in Providence, R. I. He left school to fit for the family business, that of tanning, in which he served from "boy" to managing partner, until, owing to failing health, he retired in 1874. In 1874 he read law in the office of Generals James D. and Francis Fessenden, and was admitted to the bar in 1877; but a few years later, upon accession to the care of important business interests, he relinquished practice.

Early interested in public affairs, at the age of thirty he had served several years in the City Government and on the school committee of Portland. In 1871 he served on the staff of Governor Perham, with the rank of colonel. In 1872-73-74 he was a member, the last year chairman, of the Executive Council of the State. In 1874 he was unanimously nominated by the Republicans of Cumberland county for State senator. In 1876 he became a member of the Republican State Committee, on which he served, save for a few months, until 1892, and on the retirement of James G. Blaine from the chairmanship, Colonel Dow was made chairman of its Executive Committee. In this capacity he conducted the exciting campaign of 1892, adding greatly to his reputation as a skillful political leader and organizer. He was also chairman of the General Committee, but resigned both positions upon accession to federal office. In the close and exciting Congressional convention, in which

Hon. THOMAS B. REED was first nominated for Congress, Mr. Dow was selected by that gentleman as leader of his forces on the floor of the convention, where the conditions were so delicate as to require unusual tact and ability in leadership. He was a commissioner from Maine to the Centennial Exposition at Philadelphia in 1876, served as delegate at large to the Republican National Convention at Chi-



FREDERICK NEAL DOW.

cago in 1880, and in February, 1883, was appointed to the collectorship of the Port of Portland, to succeed the late Hon. Lot M. Morrill. His activity in the campaign of 1884, in behalf of Congressman Reed, then sorely pressed by factional difficulties in his party, led to his removal for "offensive partisanship" in 1885, by President Cleveland.

With James G. Blaine and others he became interested in the Portland Evening Express, made it a Republican organ, and by his energetic methods widely extended its circulation and influence. In the fall of 1886 he was unanimously nominated for the Legislature by the Republicans of Portland, was elected at the head of his ticket, and served on the judiciary and library committees. Re-elected in 1888, he was unanimously nominated for

speaker by the Republicans, and elected. In October, 1890, he was nominated by President Harrison for collector, and was instantly confirmed by the Senate without the almost invariable formality of reference to a committee.

Colonel Dow is actively engaged in various business enterprises, being largely interested in real estate. He is president of the Evening Express Publishing company, president of the Portland, and director in the Casco, Loan and Building Associations, is a director in the Portland Gas Light Company, Union Safety Deposit and Trust Company, Casco National Bank, Mercantile Trust Company, and Commercial Union Telegraph Company, and was formerly a director of the Portland and Ogdensburg Railroad. He is also president of the board of trustees of the Maine Eye and Ear Infirmary.

He finds in the numerous enterprises with which he is associated full opportunity for the employment of the energy, executive ability and public spirit which are his chief characteristics. In public life a ready and effective speaker and forcible writer, and enjoying an extensive acquaintance throughout the State, he has long occupied an influential position in the councils of his party. Active and aggressive in political affairs, of strong convictions, and positive in the expression of his opinions, it is natural that he should arouse antagonism. But he has never allowed political differences to disturb personal relations, and earnest political opponents are numbered among his warmest friends.

Colonel Dow was married in October, 1864, to Julia Dana Hammond, daughter of the late William Hammond, a prominent citizen of Portland. They have two children, William H., vice-president of the Evening Express Publishing company, and Marian Durant Eaton, wife of William C. Eaton, a prominent lawyer of Portland.

LIBERTY HAVEN HUTCHINSON, Lewiston, Maine, was the son of Edwin F. Hutchinson, a prominent farmer and lumberman, and Elizabeth Ann Flint, his wife, and was born in Milan, N. H., March 1, 1844. Descending from one of the oldest families in Massachusetts he inherited strong intellectual powers, and at a comparatively early age displayed those sterling characteristics which won for him success and honor at the bar. He at-



LIBERTY H. HUTCHINSON.

tended the common schools of his native town and the academy at Lancaster, N. H., and was graduated from Bates College at Lewiston, Me., in the class of 1871. He then took up the study of law in Lewiston with M. T. Ludden, and after his admission to the Maine bar in 1872 practiced his profession in that city with ever increasing success until his death, which occurred September 9, 1882. During the latter part of his career he was a law partner of Hon. Albert R. Savage, now a justice of the Maine Supreme Court, and one of their students was his younger brother, Freedom Hutchinson,¹ since 1876 a prominent lawyer in Boston.

Mr. Hutchinson devoted himself to a general practice. He was a man of marked ability,

¹ See Massachusetts division for sketch of Freedom Hutchinson.

of broad and accurate learning, and of great force of character, and rapidly rose to a prominent place at the bar of Maine. During his brief but brilliant professional career he was connected with many important cases, and displayed high legal attainments which gave him the position of leader. He was a born orator, gifted with intellectual powers of a high order, and early became an influential factor in politics. For several years he was a member of the Lewiston School Board, and for three terms he represented his district in the Maine Legislature, serving the last year (1881) as speaker of the House, to which position he was unanimously elected. Just prior to his death he was prominently mentioned as the Republican candidate for member of Congress. He was a member of the Masonic order and of various local organizations, and in every capacity exhibited unflinching integrity, fidelity, public spirit, and patriotism. As a lawyer he achieved eminent success, and as a citizen he was universally respected and esteemed. He enjoyed the confidence of the entire community, and was a member of the Unitarian church in Lewiston and for some time superintendent of its Sunday school.

Mr. Hutchinson was married in 1870 to Mary E., daughter of Nehemiah H. Emery of West Newbury, Mass., who survives him. They had five children: Annie L., Albert Savage, Edwin Liberty, Mary Emery, and Grace Lyndon.

LOT MYRICK MORRILL, Augusta, the distinguished United States senator from Maine, and the twenty-second governor of that State, was born in Belgrade, Me., May 13, 1813. He was one of a family of seven sons and seven daughters. His father was Pensley Morrill, a typical representative of the hardy pioneers who extended the blessings of civilization over the former frontier wilderness. In 1797 he appears to have been enrolled as a citizen of the territory of Augusta, and sometime

later he removed to Belgrade and bought a farm.

Lot M. Morrill attended the district school, and worked in his young years in a saw mill and as clerk in a store. He early determined to become a lawyer, a determination that was, to some extent at least, born of what he saw and heard in Augusta court, where he attended with his father when thirteen years old. From



LOT M. MORRILL.

the age of sixteen he began teaching school to aid in defraying the expenses of his education. At the age of eighteen he entered what is now Colby University in Waterville, Me., but in his ardor to enter the profession he had chosen, he left college before graduation and entered the office of Judge Edward Fuller, of Readfield. He practiced there to some extent before he was admitted to the bar in 1837, carefully cultivating his oratorical powers. After his admission he formed a partnership with his fellow student, Timothy Howe, and they continued in practice in Readfield until 1841, when, in order to enter a wider field of professional labor, he removed to Augusta and formed a partnership with James W. Bradbury, still a venerable member of the Augusta bar. Mr. Morrill was a Democrat in his early life,

but was always an opponent of the extension of slavery, and also was a strong temperance advocate.

He was elected to the State Legislature in 1853, having already become a prominent factor in local politics. Re-elected in 1854, he received a considerable vote against William Pitt Fessenden in the United States senatorial contest of that year. He was a member of the State Senate in 1856-57, and president of that body in the latter year. During this session Mr. Morrill strenuously opposed the attempted repeal of the Maine prohibitory law and the removal of Judge Davis from the bench in such vigorous and eloquent speeches as to give him a State reputation. He also was at that period an earnest opponent of a resolution pledging the Democratic party in Maine to further concessions to the slave question in the Territories. Notwithstanding this, he was made a member of the Democratic State Committee, but refused to act after the Cincinnati Convention in 1856, which nominated Buchanan for the presidency. The platform of the party adopted in that convention he characterized as a "flagrant outrage upon the country and an insult to the North."

Mr. Morrill now allied himself with the Republicans and soon became an influential power in the councils of that party. In spite of his recent connection with the Democracy and the desire of many leaders to select a candidate who had long been identified with the party, the Republicans united upon him as a candidate for governor of Maine in 1857, and he was chosen by a large majority. His popularity was so great and his administration of the high office so efficient, that he was twice re-elected. Having expressed a wish to retire from the gubernatorial chair, he was elected, on June 10, 1861, to the United States Senate, to fill the unexpired term of Hannibal Hamlin, and took his seat on the 17th of June as a colleague of Mr. Fessenden. In 1863 he was re-elected for the full term. In 1869 he was defeated by a single vote in the memorable Hamlin-Morrill senatorial contest of that year,

but was soon called to fill the vacancy in the Senate caused by the death of Mr. Fessenden, in September, 1869. He was again elected for the full term, but resigned in 1876 to accept the portfolio of the Treasury under President Grant, an office which he filled with ability and distinction. So highly was his public service appreciated at this time that President Hayes offered him the choice of any position he might select, and upon intimation that collector of customs of the Port of Portland would be most congenial to him, he was promptly appointed to that position.

The period during which Mr. Morrill served in the United States Senate was a trying one for the whole country and demanded from high government officials patriotism and unselfishness, bravery and integrity. In none of these respects was Mr. Morrill deficient. He ever saw his duty clearly and unhesitatingly went forward to its performance. He was a true citizen of the Republic and a noble man.

A period of intense overwork prostrated Mr. Morrill with serious illness in 1870, causing a degree of nervous prostration from which he never fully recovered. He died in Augusta, January 10, 1883.

SCOTT WILSON, Portland, Me., was born in Falmouth, Me., on January 11, 1870. He is a son of Nathaniel B. and Louisa P. (Leighton) Wilson. The family is an old one in that part of the State, the father and grandfather of the subject both being natives of Falmouth. The great-grandfather, whose name was also Nathaniel, was an early settler and cleared a homestead in that part of Falmouth, known as Poplar Ridge. He was a son of Major Nathaniel Wilson, an officer in the Revolutionary army, and grandson of Gowen Wilson, who came to Falmouth and built the first mill on the Presumpscot River. On the maternal side, the mother of Scott Wilson was a daughter of Moses Leighton, of Cumberland, Me., who was a farmer, teacher,

member of the legislature, and a man of excellent character. Mrs. Wilson descended on her father's side from Hate Evil Hull, one of the early members of the family of that name which is numerously represented in New Hampshire and Maine.

Scott Wilson attended the district schools until he was fifteen years old, when he entered the Greeley institute, in Cumberland. Here he remained one year, which was followed by two years of preparation in the Nichols Latin school at Lewiston. He entered Bates college

versity Law school and was admitted to the bar at Portland in April, 1895. Since that time he has been in active practice in Portland.

Although still a young man in his profession, he has already attained an enviable position and has made himself somewhat prominent in public affairs. He is a republican and has devoted considerable time and energy to the advancement of the principles of that party. In 1898 and previous to the extension of the boundaries of Portland to include what was the city of Deering, he was city solicitor of that city. He was elected a member of the common council of Portland in March, 1899. He is attorney for the Deering Loan and Building association and has met with deserved success in the cases that have come under his charge.

Mr. Wilson was married December 24, 1895, to Elizabeth M. Bodge, of Windham, Me.



SCOTT WILSON

in 1888 and was graduated with honors in 1892. During the period passed in obtaining his education he taught at intervals in district schools.

Immediately after graduating, Mr. Wilson began the study of law in the office of J. W. Symonds in Portland, Me., and at the close of the same summer went to the Haverford (Pa.) College Grammar school and taught two years, spending his vacations in the same office, with the exception of a part of the second year, when he studied in the office of Henry C. Terry, in Philadelphia. He then took a special course in the Pennsylvania uni-

ALBION KEITH PARRIS was born in Hebron, Maine, January 19, 1788, son of Samuel and Sarah Pratt of Middleborough, Massachusetts, his line of descent from Thomas Parris, London, England, was as follows: John, a clergyman living at Ugborough, England; Thomas, a clergyman who sailed from Topsham, England, in 1683, and settled on Long Island, New York, afterward moving to Boston, then to Penbrooke, Massachusetts; Thomas, Benjamin, and then Samuel, the father of our subject. Samuel was born in 1755, entered the army in 1775 and served with much distinction throughout the Revolution. Returning home after the war, he married Sarah Pratt, moved to Hebron, Maine, where he was one of the early settlers and where, for several years, he held the office of judge of the Court of Common Pleas for Oxford county. He died in 1847.

Young Parris worked on the farm until fourteen years of age, then prepared for college, entering Dartmouth, second year class, in 1803 and graduating in 1806. After graduation he read law in Judge Whitman's office,

first at New Gloucester and later at Portland, when Judge Whitman moved to the latter place. He was admitted to practice at the Cumberland bar in 1809 and opened his first office at Paris, Oxford county. The success he attained from the start increased as the years rolled by. In 1811 he was made attorney for the county of Oxford and two years later was elected to the general court of Massachusetts. The next year his constituents sent him to the Massachusetts senate as the representative from Oxford and Somerset counties. In the same year he was elected to the United States congress and served nearly two terms. The second term was interrupted by his appointment to the judgeship of the District Court of the United States for Maine. This was when he was only thirty years of age, in 1818. This appointment necessitated his removal to Portland and the following year he was a member of the convention assembled to draft a constitution for the proposed new Commonwealth of Maine. Under the new State conditions Judge Parris was appointed judge of Probate for Cumberland county. In 1821 Governor King was appointed a commissioner to settle the Spanish claims and after a spirited, three-cornered fight, Judge Parris was elected governor and was elected five successive times, declining again to be a candidate. Probably the most important State measure before the public during his administration as governor was that of the northeastern boundary, and his plans to thoroughly obtain copies of all existent maps and records did much to aid the peaceful settlement of the questions involved. He was, as a public officer as well as a private citizen, a constant exponent of public education and his influence did much to place the Pine Tree State among the leaders in educational matters. In 1825 he had the privilege of entertaining Lafayette upon his visit to Maine, where the latter found many of his old war companions.

In the last year of Mr. Parris' terms as governor he was elected to the senate of the United States, but he served only about a year in that

high office when he was called to be associate justice of the State Supreme Court. Judge Parris' change from one public position to another before one term of office expired seemed to be almost a habit. This time, in 1836, he was appointed by President Van Buren second comptroller of the treasury of the United States, serving until 1849, through the administrations of Van Buren, Harrison, Tyler and Polk. Three years later he was elected mayor of Portland. He declined to stand for re-election and that was the last public office he filled. His public career uninterruptedly continued for a period of thirty-six years, and this, too, without great talents as the world would speak of greatness. But he was sincere, faithful, methodical, inspired great faith and the people loved to honor him. He died at Portland, February 11, 1859.

In 1810 Judge Parris married Sarah, daughter of Rev. Levi Whitman, of Wellfleet, Massachusetts, and they were the parents of three daughters and two sons.

REUEL WILLIAMS was one of the most successful of the native lawyers the State of Maine has yet produced. Many of her famous sons were born in other States, but Reuel Williams was born on her soil, at Augusta, in June, 1783. His parents were poor, and in some way had lost, or perhaps never kept, the family record so common among New Englanders. He was, however, probably descended from Richard Williams, whose son Benjamin married in Taunton, Massachusetts, in 1690. That famous champion of the rights of conscience, Roger Williams, was probably of the same family, and the records show that he came from Wales. Seth Williams, the father of Reuel, was born at Easton, Massachusetts. In 1779 an expedition was fitted out to retake Castine, which the British had captured, and Seth, with his brother, enlisted. Our forces met a disastrous defeat in August of that year, and were forced to return homeward with loss of both supplies

and reputation. They landed at Penobscot bay and started overland through the wilderness and tangled forests. The suffering was intense, and when Seth Williams and his brother reached Fort Western they determined to settle there. Seth was an experienced tanner and shoemaker, and commenced his two trades to his own advantage as well as that of the community and surrounding country. In the winter of 1780 he married Miss Zilpha Ingraham, of Augusta, by whom he had six sons and five daughters. Reuel was the second son and was born June 2, 1783.



REUEL WILLIAMS.

Reuel Williams' parents were poor and able to give their children only a district school education, and as the boys became old enough were compelled to aid their father in his business. However, through money earned as bridge tender and the help of Judge James Bridge, mention of whose career appears in this work, our subject was enabled to attend for a year the academy at Hollowell, after which he commenced the study of law in Judge Bridge's office. At the end of five years study young Williams was prepared for legal practice, commencing in 1802. Mr.

Williams was the second lawyer in Augusta, Judge Bridge having been the first, and within ten years Mr. Williams did the bulk of the business of the office, these legal giants being partners. At that time there was more business done in that office than in any other in the State of Maine, especially in what related to real property. As a lawyer Mr. Williams was sound and quick of apprehension; his mind perceived clearly the relations of the different points of a cause; as an advocate, he was calm and logical and his arguments were unusually clear and concise. It is said he never lost a case for want of taking the proper strategic ground. The results of his practice were—reputation to be envied by any lawyer, property, political station, public confidence sufficient to gratify the desire of the most ambitious.

After twenty years of practice he consented to enter politics and was elected to the legislature in 1822, and for twenty years took an active interest in public affairs. After four years in the lower house of the Maine legislature he was elected to the State senate, which office he held until the close of the session of 1828. Land questions among settlers and between the Washington government and the English subjects on the north caused considerable anxiety in those days, and to this branch of legislative work Mr. Williams brought his talents and experience to the end that many important, and sometimes dangerous international questions were amicably settled. In the settlement of the public lands questions which arose between Maine and Massachusetts, Mr. Williams, together with William Pitt Fessenden and Elijah L. Hamlin, rendered his State very valuable service. In 1836 Mr. Williams was a member of the electoral college, casting his votes for Martin Van Buren for president and Richard M. Johnson for vice-president of the United States. The following year he was elected to the United States senate. He had been a federalist and a whig while those parties had distinct organizations, but during his entire

period of service in the United States senate he acted with the democrats. Owing to Mr. Williams' difference with his constituents on certain political questions, he resigned his seat in February, 1842, after which date he gave his time to his personal affairs, among which was the making of a railroad to connect at Portland and thus give through rail connection to Boston. Mr. Williams was manager of this steam highway for twelve years. He died July 25, 1862, by common consent the ablest man in his native city.

In 1820 Bowdoin college conferred upon him the degree of A. M. and in 1855 that of LL. D. In 1815 Harvard also gave him the degree of A. M. Mr. Williams married the daughter of Judge Daniel Corry of Augusta, who bore him eight daughters and one son; the latter, Joseph H. Williams, having followed the profession of his father and settled in Augusta, where he honored the good name passed to him by the illustrious father and citizen.

CHARLES AUGUSTUS TRUE, Portland, is descended from early New England settlers. Among his maternal ancestors were two captains in the American army during the Revolutionary war and one Tory, the latter being in the employ of the English government before the conflict began and was one of a large party of Portsmouth, N. H., people who, when conditions became unpleasant, went to Halifax, where they remained until after the independence of the colonies was attained. On his father's side the family came to Maine from Salisbury, Mass., in which section it was well known during the early part of the eighteenth century.

On the 24th of November, 1869, Charles Augustus True was born in the city of Portland. His father, who was born in the same city the 23d day of July, 1837, was Samuel Augustus True, and his mother Ellen A. (Hart) True.

The Forest City, as Maine's metropolis is very properly called, takes great pride in the

high standing of its public schools, and it was in these cradles of American liberty that the subject of this sketch received his early and college preparatory education. His college training was obtained at Colby, from which institution he was graduated with honor in 1882, his high standing entitling him to admission to Phi Beta Kappa. Of the social Greek letter fraternities, Delta Kappa Epsilon claims Mr. True as a member. His college work was supplemented by three years' study in the law offices of Symonds & Libby, Portland, and one year in the Harvard Law school. Since his admission to the bar in 1885 Mr. True has continuously practiced law, and to-day is one of the leading attorneys of his native city, which has produced more than its quota of legal lights.

Because of his ability as an organizer, his oratorical powers and his aggressive republicanism, several public and party official positions have come to Mr. True. From 1888 to 1892 he was a member of the republican county committee; during the same years, assistant county attorney; and from 1892 to 1896 county attorney. While filling the latter position he had charge of four capital cases, the expert handling of which attracted unusual attention not only in Maine but throughout New England.

Among the fraternal orders Mr. True affiliates with the Masons, Odd Fellows and Knights of Pythias.

On the 16th of October, 1888, Mr. True was married to Miss Gertrude A. Paine, of Portland. To this union have been born two children: a daughter, Gertrude, and a son, Nelson.

WILLIAM BARTLETT SEWELL.

From 1692 to 1819 one of the Sewell family had a seat on the bench of Massachusetts and Maine. These were Samuel, Stephen, David and Samuel, all descended from Henry, who came from Coventry, England, to Newbury, Massachusetts, in 1634. In

addition were Jonathan, attorney general before the Revolution, and Daniel and Henry, both lawyers of high standing.

William, our subject, was the son of Daniel Sewell of York county, who descended from the first Henry through his second son, John. Mr. Sewell said he was born "about 2 o'clock A. M., according to the best of my recollection and belief, December 18, 1782." His mother was Dorcas Bartlett, daughter of John H. Bartlett. During his younger days, William B. Sewell attended the grammar school which was kept open part of each year at York. His



WILLIAM B. SEWELL.

college preparatory work was done with the assistance of two private tutors and he entered Harvard college in 1799. After graduation he entered the law office of Isaac Parker, at Portland. After Mr. Parker's elevation to the bench, young Sewell continued his law studies with Prentiss Mellen and completed them for admission to practice in the office of Edward St. Loe Livermore, at Newburyport, and was admitted to the Essex, Massachusetts, bar. He returned to Portland, however, was admitted to the Cumberland bar, and opened an office. Soon Prentiss Mellen, whose duties took him

out of the city a great portion of the time, invited Mr. Sewell to form a partnership, which the latter accepted. Mr. Sewell was a good lawyer, had a clear and discriminating mind and was noted for his accuracy and familiarity with the forms of practice and conveyancing. He, however, never gained much ability as an advocate, as his jury work was all done by his partner. Mr. Sewell was a scholar of cultivated taste, who preferred the quiet pursuits of his library to the wrangles of the bar, and he devoted much of his time to literary pursuits and writing for newspapers. Mathematical and statistical studies also appealed to him and he spent much valuable time for several years in compiling the Register of Maine, the first copy of which appeared in 1820. Upon the death of his first wife, in 1819, he moved to the old homestead and lived with his father and sisters until 1823, when he returned to Portland and took charge of the editorial department of the Advertiser, which he continued to conduct until 1837. In that year he returned to Kennebec, again married, and practiced law moderately until his death.

CHARLES WILLIS JONES, attorney of Augusta, Me., was born in Vassalboro, Kennebec county, Me., March 16, 1862. He is a son of Allison K. and Ellen (Weeks) Jones. His grandfather on the paternal side came from England and was one of the earliest settlers in the town of Jefferson, Lincoln county, Me., where he was a respected citizen. His grandfather on the maternal side was Abner Weeks, a prominent business man of Houlton, Arundel county, Me. From this sturdy colonial ancestry the subject has inherited the sterling qualities that have enabled him to achieve an honorable success in life.

Charles W. Jones is one of the only two children of the family, the other being Frederick A. Jones, now a resident of Boston. Born on the farm and reared amid its scenes of toil, the young man acquired habits of industry and perseverance. After attending the common

schools he fitted himself for college at the Oak Grove seminary, in Vassalboro, and the Waterville Classical institute. His ardent hopes of obtaining a liberal education were frustrated by the death of his father when he was twelve years old, leaving the burden of business cares upon the young shoulders of his son, and giving him a profitable if hard experience in the practical affairs of life. After passing his majority he studied law in the office of S. & L. Titcomb, of Augusta, and was admitted to the bar at the October term of the Supreme Judicial Court in 1888. He opened an office in Augusta

Prison association of the United States, held in Baltimore. In 1896 Mr. Jones was elected an assessor of the city of Augusta. He is prominent in Free Masonry and served as master of Negunkeag lodge of Vassalboro in 1887. He is a member of Augusta lodge, of Oshlucce chapter, Royal Arch Masons, of Jerusalem council of Royal and Select Masters, of Trinity commandery of Knights Templar, and of the Alonki club of Augusta.

Mr. Jones was married March 11, 1891, to Pauline S. Sawtelle, of Bangor. They have one son.



CHARLES W. JONES.

and has ever since been in active and successful practice. He has made a specialty of commercial law business, in which he has a large clientele.

Mr. Jones has taken an active interest in local politics and has been honored with positions of trust. He was elected a representative to the Maine legislature in 1892 and received the appointment of chairman of the board of inspectors of prisons and jails by the governor of the State. During his administration of this office he was instrumental in making many judicious improvements in the management of jails, as well as in the State prison. In 1892 he was a delegate from Maine to the National

EZEKIEL WHITMAN, lawyer, statesman, jurist, was born in East Bridgewater, Massachusetts, March 9, 1776. He was of the sixth generation of the descendants of John Whitman, who came to this country about the year 1635 from England, and settled in Weymouth, Massachusetts. Thomas, the eldest son of John, was born in England, and came over at the age of twelve years. In 1662, Thomas moved to Bridgewater. Nicholas was the third son of Thomas; Josiah was the eighth son of Nicholas; and Josiah's third son, Josiah, was the father of Ezekiel, our subject. His mother was Sarah, a daughter of Caleb Sturtevant of Halifax, Massachusetts. She was a lineal descendant of Elder Robert Cushman, of Plymouth. Judge Whitman was of the seventh generation from Elder Cushman, and in the same degree from Samuel Sturtevant, of Plymouth in 1643, the ancestor of the families of that name. His mother was left poor, with two infant children, a son and daughter, and she did not survive to superintend the education of her children, nor to enjoy the prosperity and honor which her son achieved. His life was continued many years through a hard struggle with poverty. At the age of seven, the Rev. Levi Whitman, of Wellfleet, took charge of him, and gave him the rudiments of an education. At the age of fourteen years he became uneasy at his state of dependence, and determined to go to sea; but his uncle resolutely opposed that mode of life, and

persuaded him to pursue the preparatory studies for a liberal education. For this purpose he was placed with the Rev. Killbourn Whitman of Penbrooke, who afterwards became a lawyer of considerable practice in Plymouth county. He was, however, a wayward student, apt to learn and quick of discernment, but not very diligent in the routine methods of that day. His life had been so desultory that he had not formed habits of patient industry. But it was no great affair at that time to pass through the preliminary preparation for college. A little knowledge of Virgil and



EZEKIEL WHITMAN.

Cicero, in Latin, and of Luke and the Acts, of the Greek Testament, seem to have been sufficient in the classical department; so, after fifteen months' study, in 1791, he offered himself at the door of Brown university for admission, and was freely received. During the vacation of his first year, and the winter following, he taught school in Marshfield. His funds being entirely exhausted, he was forced to leave college in his senior year, and again resorted to school teaching to recruit his means for completing his course; returning just previous to commencement he was, after examination, admitted to his degree.

On taking his degree, Mr. Whitman's funds were at their lowest ebb. He was absolutely penniless, and various plans for immediate relief passed through his imagination; one of these was to go upon the stage. Powell, who was a familiar star in those days, was playing at Providence, and it came into young Whitman's mind to join his company. His friend, Peleg Chandler, urged every argument to dissuade him from this course, and he abandoned the project, and also the one of going to sea. At last, after many struggles, he came to the resolution of studying law, and immediately entered the office of Benjamin Whitman of Hanover, where he remained a short time, and then went to that of Nahum Mitchell of East Bridgewater.

He had acquired so good a character, while engaged in his legal preparation, that he was employed on an important mission into the far distant regions of the then southwest. A gentleman of Bridgewater had purchased Virginia land warrants which that State sold with unbounded liberality at very low prices, the locations to be made in what is now the State of Kentucky. In consequence of these indiscriminate sales, the greatest possible confusion occurred in making locations and securing the titles. In some instances the same land was covered by several surveys loosely and indefinitely made, so that no purchaser knew his property unless he took and kept actual possession of it. His client had procured a large quantity of land to be surveyed and located under his warrants, but died before the conflicts in regard to his rights were adjusted. Mr. Whitman was sent out by his heirs, in 1796, to gather up the wrecks of the property, and close the settlement of the estate. He traversed the whole distance on horseback; spent the year in Kentucky and returned in the same manner.

Mr. Whitman was admitted to the bar in Plymouth county in 1799. The population of Maine was then one hundred and fifty-one thousand. Few attorneys on entering practice were better qualified for its duties than Mr. Whitman. He had been well instructed and disciplined in the profession and taught

to exercise and rely on his own powers. His whole equipment of books was Blackstone's Commentaries, the *Nisi Prius* Digest of Mr. Espinasse, embracing the substance of Justice Buller's work with additional cases; the Statutes of Massachusetts, and the four books of forms styled "The Clerk's Assistant," "Probate Auxiliary," "Town Officer," and "Justice's Assistant." Such was the humble library with which Maine's eminent lawyers began their careers in the early days. In September, 1799, Mr. Whitman moved to New Gloucester. In January, 1807, he established himself in Portland. Here he entered upon a very extensive practice, enjoying the confidence of the community, and sharing the best business with Melton, Biddeford, Longfellow, Orr and Hopkins. His name appears in the first volume of Massachusetts Reports, 1805, although he had been at the bar but six years, and never ceased to be represented in those records of jurisprudence, and those of Maine, until his final retirement from the bench in 1848. The quality of Mr. Whitman's mind was clear, solid, and practical; his judgment was cool and impartial, and his perceptions of the true and the false were quick and keen. He stripped every cause with which he was concerned of its shams and disguises, and held it up in the light of simple truth. Mr. Whitman was successfully employed in advocating claims of our merchants under the treaty with Spain of 1819, and attended upon the commissioners at Washington for that purpose. He also was engaged for clients under the convention with France of July, 1831, by which France appropriated twenty-five millions of francs to pay American claims.

The appreciation in which Mr. Whitman was held in his county is shown in the effort of his friends to bring him into political life. In 1806, General Peleg Wadsworth, who had represented the Cumberland district in congress fourteen years, declined a re-election, and Mr. Whitman, then residing in New Gloucester, was selected as the candidate of the federal party, but was defeated. At the next election,

1808, political excitement ran high; the embargo, laid December, 1807, had been destructive of the commercial interests of this section of the country, and the administration had become unpopular and Mr. Whitman was elected by about three hundred majority. At the election for the twelfth congress, November, 1810, the contest was severe between Mr. Whitman and William Widgery. The result was that each party had one thousand six hundred and thirty-nine votes. On the next trial, in April, Mr. Widgery was elected by a small majority and Mr. Whitman returned well pleased to his profession. From 1811 to 1817 he devoted himself to the practice of law. In 1815 and 1816, he was a member of the executive council of Massachusetts, and in 1816, a member of the convention held at Brunswick to discuss the separation of Maine from Massachusetts. In 1816, Mr. Whitman was again elected representative to Congress, and re-elected for the terms 1819 and 1821.

On the 4th of February, 1822, the new State of Maine passed an act establishing a court of Common Pleas for the State, to consist of a chief justice and two associate justices. Governor Parris constituted the court by the appointment of Mr. Whitman chief justice, and Samuel E. Smith, afterwards governor of the State, and David Perham, of Penobscot county, associate justices. Mr. Whitman then resigned his seat in congress, and retired from political life. He continued to discharge the duties of principal judge in the Common Pleas with great fidelity and ability, with unimpeached integrity, until December, 1841, when he was appointed chief justice of the Supreme Court, as successor to Chief Justice Weston. At the head of the highest judicial tribunal of the State, Chief Justice Whitman devoted himself with untiring diligence to the work for a period of nearly seven years. He resigned the office in October, 1848, at the age of seventy-three. The judicial opinions of Chief Justice Whitman are contained in nine volumes of the Maine Reports, from the twenty-first to the twenty-ninth, inclusive. In 1852 he removed to East Bridgewater.

SAMUEL FESSENDEN—or as he was more popularly known—General Fessenden, was the son of Rev. William Fessenden of Fryeburg, Maine, and was born July 16, 1784. He was a direct descendant of Nicholas Fessenden who came from England to Cambridge, Massachusetts, in 1674. Nicholas was heir and nephew of John, who died childless. Nicholas' son William was born in 1693, married Martha Wyett in 1716 and had eleven children; another William, born in 1718, graduated from Harvard in 1737, married Mary Palmer in 1749 and had six children, one of whom, William, the father of Samuel, was born November 3, 1747, graduated from Harvard in 1768 and settled as the first minister in Fryeburg, 1775. This William was married first to Sarah Reed of Dunbarton, New Hampshire, in 1771; second to Sarah Clement of Boscawen, New Hampshire, who bore him nine children.

Samuel Fessenden received his early education from his parents, afterwards entering Fryeburg academy. Before entering college and during his course at Dartmouth he taught school to aid in his support. He was graduated in 1806.

After three years study in Judge Dana's office at Fryeburg, General Fessenden was admitted to practice and opened an office in New Gloucester. Simon Greenleaf, who lived in the adjoining town of Gray, was his most formidable competitor and their sharp encounters at the bar were great educators for both of them. In 1822 General Fessenden moved to Portland, where his fame and his business followed him. He formed a co-partnership with Thomas Amory Dobbins, a Harvard graduate. General Fessenden was particularly familiar with real estate law, the subject of most of the causes which occupied the Maine courts at that time. The partnership with Mr. Dobbins was dissolved in 1854, when Mr. Fessenden took his son into partnership.

The literary attainments of General Fessenden were marked, he had a classical taste and his mind was stored with general reading and

historical data. In 1828 he was elected a member of the Maine historical society; in 1846 Bowdoin conferred on him the degree of LL. D. He was a strong federalist of the Washington and Hamilton school. He represented New Gloucester in the general court in 1814, 1815, 1816, was senator from the county in 1818 and 1819. His commanding figure, his full round voice, his graceful gestures could not but attract attention and make him a natural leader in a deliberate assembly, and his popularity was so great that while senator both houses elected him major-general of the twelfth division of the Massachusetts militia. He held this office fourteen years. In 1825 and 1826 he represented Portland in the legislature and served his constituents faithfully. He followed the federal party through its various changes until it espoused the cause of slavery; he entered the emancipation party ranks and did yeoman service in its cause. It was a bitter struggle even in Portland, and he became for awhile unpopular because of his earnest efforts to free the African from slavery. He received colored people into his house, took them with him to church and encouraged them in every way. Through his efforts Macon B. Allen, colored, was admitted to practice in the Cumberland courts, but not without a sharp contest and one rejection of the application.

Mr. Fessenden's home life was a model and his children proved to be worthy offspring of a worthy father. Four of his sons were lawyers; one, William Pitt Fessenden, being the most distinguished, and whose photographic portrait and memoir appear in this work.

SAMUEL AYER BRADLEY, Maine, was descended from the New Hampshire family of that name which settled in Penacook about 1729. His first ancestor in America was Daniel Bradley, who came in the Elizabeth from London, England, 1635, and settled in Haverhill, Massachusetts. He had a son, Daniel, whose wife's given name was Hannah.

To this union was born Joseph, whose son, Abrahama, was the New Hampshire settler referred to in the foregoing. Abraham, who died in 1754, was married to Abigail Philbrick, who bore him ten children. His seventh son, Samuel, was the grandfather of the subject of this sketch. John, the father of our subject, was born February 13, 1742; married Hannah Ayer and was the father of nine children.

Samuel Ayer Bradley was born at Concord, New Hampshire, November 22, 1774. His father had large land interests near Fryeburg, Maine, and, together with two of his brothers,

interest in politics than the law and during the exciting periods of the embargo, the war of 1812 and the discussions on State sepeation, he was a prominent figure. From 1813 to 1818 he was a member of the general court from Fryeburg and proved himself a powerful debater during this legislative experience; he was opposed to the war of 1812 and also to the separation of Massachusetts from Maine.

In 1825 Mr. Bradley moved to Portland and engaged in timber land speculations and other occupations outside his profession which became a source of profit. He died at Fryeburg, September 24, 1844.

In personal appearance Mr. Brady "was a tall, well-made, well-proportioned man, of handsome person, and easy, pleasant address;" he was generous to a fault, especially where his friends were in need. In his will he remembered General Fessenden, Judge Mellen, Mr. Orr, Mr. Hopkins, Mr. Longfellow and Mr. Davies, his special companions in the legal profession. His benefactions went the whole extent of his property—his good wishes far extended that.



SAMUEL A. BRADLEY.

he moved to that place about 1794. Rough farm and pioneer life was not to his liking and in the fall of that year he commenced study for college, entering Dartmouth in 1795, and graduating in 1799. Mr. Bradley commenced practice in Fryeburg, where, notwithstanding he had as competitors such powerful legal lights as Judah Damm and Jacob McGow, he almost immediately secured a fair share of the legal business of the town and county; his regular work in fact, extending over three counties, Oxford, York and Cumberland. Notwithstanding his large practice he took more

FREDERICK ALLEN, Garduer, Maine, was born in Chilmark, Martha's Vineyard, about 1784. James Allen, his ancestor, settled there in 1668 on an estate of two thousand acres which was called Manor of Tisbury, and which had been purchased from the Indians. James's wife was Elizabeth Perkins, who bore him a large family, and his father was probably George Allen, who lived in Lynn, Massachusetts, in 1636, and moved to Tisbury in 1668.

By the death of his father, Frederick Allen lost a valuable helper when only three years old, for the father was a Harvard graduate and had much legal training. Because of this circumstance, Mr. Allen, when he reached the student's age, was obliged to avail himself, in the intervals of labor, of such instruction as he could obtain in Chilmark, aided by his older brother, Homes Allen, and his brother-in-law,

Dr. Allen Mayhew. At an early age he came to Maine, where his sister, the wife of a Dr. Tupper, lived at the head of Swan island. He was a clerk in a general store. At the age of eighteen he entered the office of his brother, Homes, who was an attorney in Barnstable, Massachusetts, where he remained two years and then entered the law office of Benjamin Whitman of Hanover, Massachusetts. Mr. Whitman moved to Boston and there young Allen followed him. After admission to the bar he settled in Wadsworthborough. That was in 1805, and the population was only about two thousand and mostly Germans. In 1808 he

him into the counties east of Cumberland. It was, indeed, surprising that a man with so little gift of oratory should have acquired so extensive a business; but his faithfulness to his clients' interests, his sound knowledge of the law, his integrity and strictly honorable practice did its work.

In 1820 Bowdoin college conferred upon Mr. Allen the honorary degree of A. M. and in 1847 the more distinguished degree of LL. D.

Mr. Allen married Hannah Bowen, daughter of Oliver Whipple of Portsmouth, New Hampshire, in 1812. He died September 28, 1865.



FREDERICK ALLEN.

received an offer from Nathan Bridge of Gardner, to form a partnership and this offer Mr. Allen accepted, and ever afterward made that city his home. Mr. Bridge's specialty was looking after the estates of absent landlords and Mr. Allen attended to the court business. After four years, Mr. Bridge withdrew and by wise counsel and good management Mr. Allen held the business of the firm and gained new clients, until his practice extended into Lincoln, Somerset, Franklin and all eastern counties. After the separation of Maine from Massachusetts his business increased rapidly and carried

TIMOTHY BOUTELLE, for half a century a prominent Maine attorney, was descended from James Boutell, who came from England in 1635. He settled in Salem, Massachusetts, and died there in 1651. Like so many of the Puritan names, the spelling is different in different branches of the family, the most prominent forms being Bontell, Bontwell and Bontelle. Our subject's father was a well-to-do farmer in Leominster, Massachusetts, where Timothy was born, November 10, 1777. His mother's maiden name was Rachel Lincoln. Young Boutelle showed considerable mental strength and his father encouraged him to gain a liberal education. He entered Harvard college in 1796, from which he graduated in 1800. In college he was the clerk of the late Chief Justice Lemuel Shaw, of Massachusetts, whose photograph portrait and a memoir appear in this work. After graduation Mr. Boutelle became assistant preceptor in Leicester academy, where he taught one year and then commenced the study of law in the office of Abijah Bigelow in his native town, and finished his law course with Edward Gray in Boston. He was admitted to the bar in 1804, and moved to Waterville, Maine, where he lived until he closed a long and busy life, November 12, 1855.

At first our subject's business was small, but so was the population, and not much could be expected; but it gradually increased as the

population became greater until he stood at the front rank of his profession throughout that section of the State. Chief Justice Shaw said of him: "In a bar eminent for talents and learning, he had the reputation of being a well-trained and well-read lawyer, with a quick apprehension and a power of legal discrimination which enabled him to discern and apply the sometimes nice distinctions of the common law, to involved and intricate combinations of fact, with peculiar force and effect." With a mind acute and comprehensive, and well stored with legal principles and standard authorities, he could not fail to command a

first twenty years Mr. Bontelle was frequently called to fill public office. He served six years in the house, the same in the senate, holding positions on various committees and his work being of exceptional value on the judiciary committee, of which he was often chairman.

For the prosperity and advancement of Waterville Mr. Bontelle was ever watchful; he helped procure a charter for Waterville college, the Waterville bank, and for twenty years was president of the latter; in 1847 he used his great ability and influence to procure a charter for the Androscoggin and Kennebec railroad and in many other ways showed his public spirit.

In 1811, Mr. Bontelle married Helen, daughter of Judge Rogers, of Exeter, New Hampshire, by whom he had a large family of children.



TIMOTHY BONTELLE.

full share of the best business. He was a great reader of current events and of history and few men were better informed regarding the progress of society the world over.

In his early practice Mr. Bontelle held aloof from politics. The only office he consented to fill before the separation of Maine from Massachusetts was that of presidential elector in 1816. When the separation was accomplished in 1820, Mr. Bontelle was elected the first senator from Kennebec. The early years following the separation were probably the most important in Maine's history and during the

STEPHEN LONGFELLOW, for more than a quarter of a century a distinguished member of the Cumberland bar, was born in Gorham, Maine, March 23, 1776. He was descended from William Longfellow, the emigrant, who settled in Beedfield Point, in the old town of Newbury, and who married Anne Sewall in 1678. His father, grandfather and great-grandfather were each named Stephen. The grandfather of our subject was the first Longfellow emigrant to Maine; graduated at Harvard in 1742, moved to Portland, and then accepted a position as schoolmaster at Falmouth in 1745. His son Stephen held the office of judge of the Court of Common Pleas and was held in high esteem. He died in 1824.

At the age of eighteen our subject entered Harvard in 1794. On leaving college he entered upon the study of law with Salmon Chase of Portland, was admitted to practice in 1801 and immediately opened an office in the city. One of his contemporaries said of him at that time: "Longfellow had a fine legal mind, he was industrious, attentive, courteous, and got into business at once. His first ad-

dress to the jury was plausible and ingenious and almost as good as any he afterward made." No man more surely gained the confidence of all who approached him, or held it firmer; and those who knew him best loved him most. In the management of his causes he went with zeal and directness of purpose to every point which could sustain it; there was no traveling out of the record with him, nor a wandering away from the line of his argument after figures of speech or fine rhetoric, but he was plain, straightforward and effective in his appeals to the jury and by his frank and candid manner won them to his cause. A man of



STEPHEN LONGFELLOW.

such qualities was not permitted to give his whole time to his profession and in 1814 the people sent him to the Massachusetts legislature. While there he was chosen a member of the celebrated Hartford convention in company with Samuel S. Wilde, George Cabot, Harrison Gray Otis and other federalists from the New England States. In 1816 he was chosen a presidential elector, giving his vote to Rufus King, a native of Maine. In 1822 Mr. Longfellow was elected to congress, where he was associated with such men as Lincoln of Maine, Webster of Massachusetts, Buchanan of

Pennsylvania, Clay of Kentucky, Barbour and Randolph of Virginia, McLane of Delaware. At the expiration of his term he retired from political life and gave his remaining days to his profession. The first sixteen volumes of the Massachusetts Reports and the first twelve of the Maine Reports bear ample testimony of his ability as a jurist.

In 1828 he received from Bowdoin college the honorable degree, doctor of laws. He was one of the trustees of that institution from 1817 to 1836. In 1826 he represented one of the Portland districts in the Maine legislature; in 1834 was president of the Maine Historical society. Mr. Longfellow passed away August 3, 1849.

In January, 1804, Mr. Longfellow married Zilpah, daughter of General Peleg Wadsworth, of Portland. By her he had eight children, four sons and four daughters, one of whom was the illustrious poet, Henry Wadsworth Longfellow.

PRENTISS MELLEEN, the son of Rev. John Mellen, of Sterling, Massachusetts, was born in that town October 11, 1764. His mother was Rebecca Prentiss, daughter of the Rev. John Prentiss, of Lancaster; his grandfather was Thomas Mellen, a farmer of Hopkinton, Massachusetts. His father was born there March 14, 1722, graduated at Harvard college in 1741, served long and faithfully in the ministerial office at Sterling and Hanover, and died at Reading, Massachusetts, in 1807.

His elder brother Henry and himself were fitted for college by their father, and entered Harvard together in 1780, from which they took their degree in 1784, in the same class with John Abbott, long a professor in Bowdoin college; Silas Lee, a distinguished lawyer in Wisconsin; and others who have earned honorable positions. Henry, brilliant, witty, established himself in the profession of law at Dover, New Hampshire, where he died in 1809. Prentiss spent a year after his graduation in Barnstable as a private tutor in the

family of Joseph Otis. He pursued his legal studies in the same place with an eccentric lawyer, Shearjashub Bourne, and was admitted to the bar in Taunton in October, 1788.

Mr. Mellen commenced practice in his native town, but removed in eight months to Bridgewater, where he continued until November, 1791. Not meeting with the success he desired, he again moved, and spent the winter and spring with his brother Henry in Dover. From that place, 1792, he removed to Biddeford, where he commenced that sphere of successful and honorable practice which placed him at the head of its highest judicial tribunal. His beginning in Biddeford was of the most humble kind. He thus described it: "I opened my office in one of old Squire Hooper's front chambers, in which were then arranged three beds, half a table and one chair. My clients had the privilege of sitting on some of the beds. In this room I slept, as did also sundry travelers frequently, the house being a tavern." What his library was may be inferred from this humble office apparatus. The population of Biddeford did not then exceed eleven hundred; there was then one term of the Common Pleas Court at York, for the year, in that county, and one term of the Supreme Court in each of the counties of Cumberland and Lincoln for jury trials—which was all the favor the highest judicial tribunal was then permitted to extend to this district. The law term for Maine was held in Boston, and the records kept there. Governor Sullivan had formerly lived and practiced in Biddeford, but had removed to Boston and was at the time attorney-general of Massachusetts.

From 1804, until his appointment as chief justice in 1820, Mr. Mellen practiced in every county in the State, and was engaged in almost every prominent cause. In 1806, his practice in Cumberland being extensive, he removed to Portland, where his professional engagements had become numerous, and where a very large commercial business was transacted. Mr. Mellen possessed more than ordinary powers. It was often said, previous to

the separation of Maine from Massachusetts, that the bar of Cumberland was the best in the Commonwealth. And certainly that must have been a bar of extraordinary quality, which could at one time boast of lawyers equal to Parker, Symmes, Mellen, Chase, Whitman, Longfellow, Emery; and the juniors, Orr, Fessenden, Greenleaf, Davies, who came in as the others passed to the bench or to a higher tribunal. At the bar, Mr. Mellen's manner was fervid and impassioned; his countenance lighted up with brilliancy and intelligence; his perceptions were rapid, and his mind leaped to conclusions to which other minds more



PRENTISS MELLEN.

slowly traveled, and, as a consequence, he was sometimes obliged to yield his suddenly formed opinions to more mature reflection. On one occasion Chief Justice Parsons remarked to him when he was ardently pressing a point, "You are aware, Mr. Mellen, that there are authorities on the other side." "Yes, yes, your honor, but they are all in my favor." He identified himself with the cause of his client, and never for a moment neglected it, or failed to improve every opportunity in his opponent's weakness or errors, to secure a vic-

tory. His voice was musical, his person tall and imposing, and his manner fascinating.

In 1808 and 1809, and again in 1817, he was chosen a member of the executive council in Massachusetts, and in 1816, an elector at large for president. In 1817, while he held the office of councillor, he was chosen a United States senator from Massachusetts, with Harrison Gray Otis for his colleague. This office he held until Maine was organized as a separate State, when, in 1820, he was appointed chief justice of its Supreme Court. The same year he received the honorary degree of LL. D. from both Harvard and Bowdoin colleges. He continued to discharge the laborious duties of chief justice until October, 1834, when, having attained the age of seventy, he became constitutionally disqualified for the office. On the bench his thorough knowledge of practice, his familiarity with decided cases, and his quick perception of the points and merits of a case, were peculiarly valuable at a time when the new State was forming its system of jurisprudence, and establishing rules for its future government. The industry and ability with which he discharged the arduous and important duties, while at the head of the highest court, appears forcibly written in the first eleven volumes of the *Maine Reports*, in the first nine of which he found an able exponent in his friend, the accomplished Greenleaf. Of the sixty-nine cases in the first volume of Greenleaf, in which formal reports are given, the opinions in fifty were drawn by the chief justice. A larger proportion still appears in the second volume, where of the eighty-four formal opinions, he drew seventy-four. And this industry and application is apparent through the whole series, in the last of which, second of Fairfield, of the one hundred and six opinions, he prepared fifty-five. Nor were those decisions of a light or hasty kind; many of them involved points of the highest importance, requiring profound study, nice discrimination, and keen analysis.

On his retirement from the bench, the Cumberland bar addressed a letter to Judge Mel-

len, through a committee of its most respected members, expressive of the high sense it entertained of his services and merits, and of his qualities as a man, to which tribute of affection and respect he responded with deep sensibility.

In 1838 Judge Mellen was appointed by the executive of Maine at the head of a commission to revise and codify the public statutes of the State, which had accumulated to nearly one thousand chapters, of various and in some instances, of inconsistent provisions. He earnestly engaged in this task with his colleagues, Samuel E. Smith and Ebenezer Everett, and submitted their report on the first of January, 1840, embracing the whole body of the public statute law in one hundred and seventy-eight chapters under twelve titles. This was adopted by the legislature, and constituted the first volume of the *Revised Statutes*. This was his last public service.

Judge Mellen married Miss Sally Hudson, of Hartford, Connecticut, in May, 1795. They had six children, all born in Biddeford. The oldest son, Grenville, graduated from Harvard in the class of 1818, died in 1841, at the age of forty-two; Frederick was educated at Bowdoin, from which he was graduated in 1825; prepared himself for the practice of law, but turned to art, devoted himself to painting, and died in 1834.

Judge Mellen died the last day of the year 1840. He was the last survivor of his father's family of nine children—four sons and five daughters. His youngest sister was the mother of Governor Kent.

JAMES BRIDGE was the son of Edmund Bridge, who was born in Lexington, Massachusetts, in 1739. The family of Bridge is a very old one, the American branch descending from an Englishman, who early settled in the Massachusetts colony. James Bridge's mother was Phebe Bowman, by whom he was connected with Judge Bowman of Lincoln county. His father was sheriff of

Lincoln county from 1781 to 1815, a period of thirty-four years. James was Edmund's eldest son and was born in Dresden, September 21, 1765. He graduated at Harvard college in 1787, a classmate of John Quincy Adams, Judge Crouch, Dr. H Ezekiah Packard—father of Professor Packard of Bowdoin college, and the late Judge Putnam of Massachusetts. He was the clerk of Mr. Adams and a fellow-student at law with him in the office of Theophilus Parsons at Newburyport. On being admitted to practice in 1790, he first opened an office at Bucksport on the Penobscot, but soon after removed to Augusta, where he ever after lived.



JAMES BRIDGE.

Mr. Bridge was so much engrossed by professional duties for the first twenty years of his practice, that he did not engage in political life; in 1799 he represented his town in the legislature, probably with a view to effect the establishment of Kennebec county, which was separated from Lincoln in that year. He was appointed the first judge of probate of the county, which office he resigned in 1804, and was succeeded by Judge Daniel Cony. He was a member of the executive council of Massachusetts in 1818, and a delegate to the convention

which prepared the constitution of Maine in 1819, and one of the committee to draft that instrument. Judge Bailey of Wisconsin observed that when he came to Maine in 1794, "Mr. Bridge was at the head of the bar in Augusta, and his practice was very extensive, especially in landed matters."

In 1820 Mr. Bridge was appointed one of joint commissioners of Massachusetts and Maine, "to adjust the personal concerns of the two States," and to make division of the public lands. The commissioners, consisting of Levi Lincoln, George Bliss and Silas Hohnan of Massachusetts, and James Bridge, Benjamin J. Porter and Lathrop Lewis of Maine, made their report concerning the personal rights in May, 1822, which they declared to be a full and final adjustment of all personal property and of liabilities and claims between the two States. December 28, 1822, they made a report "on the division of the public lands under the act of separation," a long and able document, and they made a final report of their doings in May, 1823. Judge Bridge was also appointed in 1820, with Albert Newhall and William Swan, a commissioner to investigate the doings of certain banks which had become bankrupt. His office business was so extensive and lucrative, that it occupied his time too much to enable him to make a distinguished figure as an advocate, yet he was an easy, graceful speaker, and capable of taking a high position in that character if he had given attention to it. Not long after his connection with Mr. Williams, he gradually withdrew from the courts and practice, and found sufficient employment as president of one of the Augusta banks and in the management of his private affairs. He was eminently a practical man, and by a steady application to the duties of private life he secured to himself a competency. He died in January, 1834.

Judge Bridge married Hannah, a daughter of Judge Joseph North of Augusta. They were the parents of seven children.

The Judiciary and the Bar of
New England

FOR THE

NINETEENTH CENTURY

BIOGRAPHICAL - NEW HAMPSHIRE

THE JUDICIARY AND THE BAR OF NEW ENGLAND.

NEW HAMPSHIRE.

EDGAR ALDRICH.—The position of United States district judge, in any part of the country, has always been regarded as one of great dignity and honor. It is a position which has been occupied by many of the most eminent jurists, often proving a stepping-stone to still higher position and greater honor in the judicial field. In the district of New Hampshire, while the incumbents of the office have not been numerous (only six men in all having occupied the position since the establishment of the court), they have been men of ability and distinction. The list includes the names of John Sullivan, eminent in the early military as well as civil history of New Hampshire, who served from September 26, 1789, till January 23, 1795; John Pickering, 1795 to 1804; John S. Sherburne, 1804 to 1830; Matthew Harvey, 1830 to 1866; Daniel Clark, 1866 to 1891; and Edgar Aldrich, the present incumbent, who was nominated by President Harrison, February 16, 1891, the nomination being confirmed by the Senate four days later. The longest term of service was that of Judge Harvey, which exceeded thirty-five years; while that of his successor, Judge Clark, was nearly twenty-five years. Judge Harvey had distinguished himself in both branches of the Legislature, as president of the Senate, member of the Executive Council, representative in

Congress, and governor of the State; while Judge Clark had won the highest rank at the bar, and been for ten years a member of the United States Senate, resigning his place therein to accept the appointment at the hands of



EDGAR ALDRICH.

President Johnson, upon Judge Harvey's decease.

Edgar Aldrich, whose appointment to the office left vacant by the death of Judge Clark was very generally recommended by members

of the bar throughout the State, is a native of the town of Pittsburg, formerly known as Indian Stream Territory, a section the jurisdiction of which was in dispute between our own and the British government for many years, and whose people, in 1830, set up and maintained for some time an independent government, pending the settlement of the controversy. It was about this time that Ephraim C. Aldrich, grandfather of the subject of this sketch, removed from the State of Connecticut and located in the territory, with his family, which also included a son, Ephraim C., the father of Edgar, born February 4, 1818, who became a prominent and influential citizen of Pittsburg, was conspicuous in town affairs for many years, was a deputy provost-marshal and largely instrumental in raising men and money for the Union service during the late war, and was also an active manager of the Upper Coos River and Lake Improvement Company. He married, in 1840, Adaline Bebel Haynes, a granddaughter of Gen. Moody Bebel, a soldier of the Revolution and of the war of 1812, who was also one of the pioneers of the Indian Stream country. They had six children, of whom but three survive: Frank, of the well-known firm of Eastis & Aldrich, wholesale starch merchants of Boston, Mass.; Edgar, and Isabel, wife of Justus W. Baldwin, of Pittsburg. The father died February 25, 1880, but the mother is still living. Edgar, who was born February 5, 1818, remained at home, receiving such educational advantages as the district school afforded, until fourteen years of age, when he entered the academy at Colebrook, where he continued about three years, and soon after commenced the study of law in the office of Ira A. Ramsey, of that town. He subsequently entered the law department of the University of Michigan, at Ann Arbor, graduating therefrom in March, 1868, with the degree of LL.B. when twenty years of age.

Returning to Colebrook, he was admitted to the bar of Coos county at the following August term of court, upon motion of the late Hon.

Hiram A. Fletcher, who stated, upon moving such action, that he would attain the age of twenty-one before the next session of the court. He opened an office and commenced the practice of his profession in Colebrook, continuing alone until January 1, 1872, when he formed a partnership with William H. Shurtleff, under the firm name of Aldrich & Shurtleff, which continued four years. Later he was for three years similarly associated with James I. Parsons, and was again alone in practice until his removal to Littleton, January 1, 1881, where he became the partner of Hon. George A. Bingham. In May, 1882, Daniel C. Remick was admitted to the firm, which continued under the style of Bingham, Aldrich & Remick, until Judge Bingham's second appointment to the Supreme bench in December, 1881. Subsequently the firm of Aldrich & Remick pursued practice until January, 1889, after which Mr. Aldrich was alone until his appointment as United States district judge.

While in practice in Colebrook he was twice appointed solicitor for Coos county, first by Governor Straw, in 1872, serving until the political overturn in 1874, and again by Governor Cheney, in 1876, serving until June, 1879, and establishing a reputation as an able and efficient prosecuting officer. In November, 1881, he was elected a member of the Legislature from the town of Littleton. Although without previous legislative experience, he was nominated by the Republican caucus for speaker of the House, and elected to that position, for whose difficult and delicate duties he developed a surprising aptness, acquitting himself throughout the session in a manner which would have done credit to a veteran parliamentarian.

At the outset of his professional career Judge Aldrich entered at once into the preparation and trial of causes, paying comparatively little attention to the ordinary routine of office work. He took delight in exciting legal and forensic contests which have characterized the practice of both the Coos and Grafton bars, and an examination of the reports will demonstrate his

active and conspicuous participation in many of the important causes on the northern docket during the last two decades.

For some time previous to Judge Aldrich's appointment it had been generally considered, and not without warrant, that the position of United States district judge for New Hampshire was, practically, a sinecure—a post of honor and emolument, involving comparatively little labor. Although under the general provisions of the Federal statutes, the judge of any district court in the circuit, which in our case embraces the States of Maine, New Hampshire, Massachusetts and Rhode Island, may be called upon, whenever in the opinion of the circuit judge the public business so requires, to hold the circuit or district court in any State or district in the circuit, very little outside service had been required of the New Hampshire district judge for many years, and the work of the court in the district itself had been very light. But almost contemporaneously with the appointment of Judge Aldrich came the Act of Congress, approved March 3, 1891, creating the Circuit Court of Appeals, for the relief of the Supreme Court, to which questions of law are taken from the various district and circuit courts, which provides that such court shall consist of the associate justice of the Supreme Court assigned for the circuit judges in attendance (an additional judge having been provided in each circuit), and the district judges within the circuit, presiding in the order of rank and seniority of their commissions. This act largely increased the duties of all the Federal judges (the salary of the district judge being at the same time properly increased from \$3,500 to \$5,000 per annum), so that, ever since his appointment, Judge Aldrich has found his time very fully occupied, having been called largely into service in the Massachusetts courts, where, as in his immediate district, he has already won an enviable reputation as a courteous, discriminating, and conscientious administrator of justice.

Dartmouth College conferred upon Judge

Aldrich the honorary degree of Master of Arts in 1891. As a public speaker he takes high rank, and has delivered several notable addresses upon special and anniversary occasions, among which may be named his address, in 1886, before the Grafton and Coos Bar Association, of which he has been a prominent member, upon the question, "Shall the Law and Trial Courts be Separated?"; that before the court upon the death of Judge Frederick Chase, of Hanover, at the September term, 1890; his eulogy of Gen. Gilman Marston, before the Grafton and Coos Bar Association, January, 1891; and his address before the Southern New Hampshire Bar Association, upon "Delays Incident to the Removal of Causes from the State to the Federal Courts," and later an address before the Grafton and Coos Bar Association on the Jury System. It may also be noted that he has more recently delivered an address before the New Hampshire Historical Society upon the Indian Stream controversy, and later before the same society upon the Affair of the Cedars and Colonel Timothy Bedel of the Revolution, and still more recently an address before the Southern Bar Association on the life of the late Chief Justice Carpenter of New Hampshire.

Judge Aldrich was united in marriage, October 7, 1872, with Louise M. Rennie, daughter of Samuel K. Rennie, of Colebrook. They have two children, a daughter, Florence M., born July 1, 1874, an accomplished young lady, educated in the public schools, at Tilden Seminary, West Lebanon, St. Mary's School, Concord, and Abbott Academy, Andover, Mass.; and a son, Ephraim Fred, born June 9, 1878, educated at Phillips Academy, Andover, Mass., and Dartmouth College, now a student at law in the office of Streeter, Walker & Hollis, of Concord, N. H., and about to enter the law department of the Boston University.

Although on account of his official duties, spending much of his time in Boston, he retains his home in Littleton, where he has a finely appointed and beautifully located residence on Church street, commanding a de-

lightful view of the village and the charming valley of the Ammonoosuc.

Thoroughly democratic and unostentatious in manner, readily approachable and courteous to all, Judge Aldrich is popular alike in the general community and in the profession of which he is a conspicuous representative. Of fine presence and strong physique, he is also endowed with vigorous intellectual powers; and with a full appreciation of the labors and responsibilities of his position, and the zeal and earnestness of comparative youth in meeting all their requirements, there is good reason for belief that he has before him a career of usefulness and honor creditable alike to himself and to the New Hampshire district.

ALONZO PHILETUS CARPENTER, LL.D., chief justice of the Supreme Court of New Hampshire from 1896 to 1898, was the son of Isaiah and Caroline (Bugbee) Carpenter, natives of Ashford, Conn., who removed to Waterford, Vt., in 1808, immediately after their marriage. Settling in a thickly timbered wilderness among the pioneers of that part of the Green Mountain State, they cleared and developed a good farm, upon which they spent their active lives, rearing a family of children whose richest inheritance was an untarnished name combined with true nobility of character. They died in St. Johnsbury at the home of a daughter, the wife of Hon. Jonathan Ross, late chief justice of the Vermont Supreme Court, and now United States senator from Vermont.

Alonzo P. Carpenter was born in Waterford, Vt., on the 28th of January, 1820. He was fitted for college at St. Johnsbury Academy, and was graduated with honor from Williams in 1849. In 1849 he received from Williams the degree of LL.D., and in 1896 the same degree from Dartmouth.

After graduation he was for two years principal of the academy at Bath, N. H., while at the same time he read law with Chief Justice

Woods and later with Ira Goodall. Among his pupils was Miss Julia R. Goodall, whom he married in November, 1853, after his admission to the bar in April. For twenty-eight years he carried on in Bath his large and successful practice alone, except for the first three years, when he was in partnership with his father-in-law, Ira Goodall, and for the last one, when his eldest son Philip was associated with him in partnership. From 1863 to 1873 he was solicitor of Grafton county. In September, 1881, he became associate justice of the Supreme Court of New Hampshire, by appointment of Gov. Charles H. Bell; and in April, 1896, by appointment of Governor Basile, chief justice of the State, as successor to Chief Justice Doe. He had removed to Concord in 1884, soon after he became a judge and died there



A LONZO P. CARPENTER.

on the 21st of May, 1898, in the seventieth year of his age.

It was said of Judge Carpenter that "as a lawyer he was keen, alert, studious, indefatigable and courageous. He was intensely practical in the management of cases. He excelled in the preparation and presentation of facts, in the management of witnesses before the jury, and in dealing with issues of law." The same

writer speaks as follows of his appointment to the bench: "His associates in the court at once found that a legal mind of the highest class had come among them. His accomplishments were conspicuous both as regards the fundamental principles of law, and in the collateral learning which has adorned his legal productions. He was familiar with the best literature of the ancient and modern classics in various languages. In other directions, where modern scholarship attracts the learned, he was an exact and diligent student. He was of firm and settled convictions, one to be reckoned with as a force in judicial administration and judicial progress. His acumen, his learning, his independence and his character are conspicuous in the luminous series of affirmative and dissenting opinions which he has contributed to the literature of the case-law in the seventeen years in which he served the State in its highest judicial court. Judge Carpenter's work will command the approval of the best intelligence of the jurists of his own time and of the future. At no period within a century has the court encountered more far-reaching issues, adjudicated more ably-contested cases, or dealt with contestants more potent in counsel, management or resources, than in those which have made the past twenty years memorable in our judicial annals.

"This court has met every occasion with superior learning and discretion, and with a steady hand and wise judgment has marked the line of law for great corporations and great political parties with that courageous impartiality to which all parties must in right and reason be subject before the law. That the best years of Judge Carpenter's life contributed in such large measure to make this an epoch in the judicial history of the State will be his most enduring monument."

Judge Carpenter's wife and four of their children survive him, the latter being Lillian, wife of Frank S. Streeter, of Concord, N. H.; Philip, of New York city; Edith, who married Bond Thomas, of New York; and Helen of Concord. Their second son, Arthur, died in 1892.

GEORGE ALLEN RAMSDELL, A. M., Nashua, governor of New Hampshire in 1897 and 1898, is the great-grandson of Abijah Ramsdell, of Lynn, Mass., and the grandson of Capt. William Ramsdell, who, in 1815, removed from Salem, Mass., to Milford, N. H., where he purchased a farm which has been the family home for nearly eighty-five years. This homestead descended to Capt. William Ramsdell, jr., and is now owned by George A.



GEORGE A. RAMSDELL.

Ramsdell and his brother. Governor Ramsdell's ancestors upon both sides were English immigrants and among the first settlers of Massachusetts. His mother was the eldest daughter of Rev. Humphrey Moore, D. D., who for nearly forty years was pastor of the Congregational church in Milford.

George A. Ramsdell was born March 11, 1834, in Milford, N. H., where he received his public school education. He spent his boyhood on the farm, developing a robust constitution, and gaining by hard work that practical experience which paves the way to success and honor. He took a preparatory course at McCollum Institute in Mount Vernon, N. H., and completed one year's study in college, after which he entered upon the study of law and was admitted to the New Hampshire bar

in 1860. He then opened an office in Peterboro, N. H., where he remained in the active practice of his profession for six years, and until he was appointed clerk of the Supreme Court for the county of Hillsboro, which occasioned his removal to Nashua, where he has since resided. He held this office until 1887, acting also as auditor, master in chancery, and referee in a large number of suits. His service as a trier of causes has never been exceeded by any member of the bar except the judges of the courts of his State. In 1893 he was offered a seat upon the bench of the Supreme Court, but declined the honor.

During his residence of over thirty years in Nashua he has filled many positions of influence and responsibility. His political life commenced with the organization of the Republican party in 1856, and ever since that time he has been one of its staunchest and most consistent supporters. For ten years he was a member of the Board of Education of Nashua and for about twenty years he has been a trustee of the Nashua Public Library. For five years he was president of the board of trustees of the New Hampshire State Industrial School. He was a member of the New Hampshire Legislature in 1869, 1870 and 1871, a member of the State Constitutional Convention in 1876, and a member of the Executive Council in 1891 and 1892. On November 3, 1896, he was elected governor of New Hampshire for a term of two years by a plurality of more than 20,000 votes. His vote was larger than that received by any gubernatorial candidate during the entire history of the State, and in his own city it was larger than that given to any man at any election, save William McKinley. Governor Ramsdell is a good public speaker, a good lawyer, and a good citizen. His active practice covered but a comparatively short period, yet as clerk of the Supreme Court, master of chancery and referee he obtained a wide experience in the various branches of the law, and gained a high reputation for ability and thoroughness. His law business at present is confined to office and probate practice.

He is president of the First National Bank and treasurer of the City Guaranty Savings Bank in Nashua, and a director of the Nashua Manufacturing Company and the Jackson Company, the leading industries in his city. He is also a director in the Wilton and Peterboro Railroads and at times has filled other offices of trust. He has always led a temperate life, never having tasted intoxicants of any kind as a beverage, nor used tobacco in any form. He is a member of the First Congregational church in Nashua and prominent in that denomination in the State, and was one of the chief promoters of the erection in 1893 of the stone church of his parish, which is not excelled by any structure of the kind in that section. He is a most unpretentious citizen, and in his pleasant home on Concord street, Nashua, is enjoying the latter part of a life which, from early manhood, has been one of ceaseless care and labor.

On November 29, 1860, he married Miss Eliza D., daughter of David Wilson, of Derry, N. H., and they have four children: Harry W. and Arthur D., both of Nashua; Charles T., of Denton, Texas, and Anna M., at home. Governor Ramsdell received the degree of Master of Arts from Dartmouth College.

IRA ALLEN EASTMAN, LL.D., born in Gilmanton, N. H., in 1809, was descended from Roger Eastman, who came to America in 1638, and was one of the first graduates of the town of Salisbury, Mass. Roger's son, Samuel, born in 1657, married Elizabeth Severance, of Salisbury. After holding important town offices in Salisbury, he removed to Kingston, N. H., in 1713, and was from that time until his death, in 1725, a representative to the General Court, taking an active part in all its deliberations. The next in descent, Samuel Eastman, was active in war against the Indians. He married Sarah (Brown) Clough, a widow and a descendant of John Brown, one of the first founders of Hampton.

Ebenezer Eastman, the grandfather of Ira Allen Eastman, born April 24, 1746, was an early settler of Gilmanton, N. H. He was one of the maintainers of the Revolution. It is stated regarding him that on hearing of the battle of Lexington, Lieutenant Eastman raised his company and proceeded at once to Boston. Afterward he acted as captain under General Stark in the battle of Bunker Hill. He married Mary Butler, of Brentwood, the heroine of the poem, "Mary Butler's Ride," which treats of the incident related as follows: "While the battle was raging on the heights of Charlestown, the news of it was received at Gilmanton; and the young wife of Lieutenant Eastman, with no friend to accompany her, no mode of conveyance but on horseback, with no road to travel but a track to be followed through the forest, left home with her only child (an infant in her arms) and rode to her father's house in Brentwood, and from thence to Charlestown, a distance of not less than ninety miles, where she found her husband in safety."

An intimate friend of Ira Allen, the brother of the celebrated Elhan Allen, Ebenezer named one of his sons Ira Allen, for whom Ira Allen Eastman was named. Stephen Eastman, the father of the subject of this sketch, was an officer in the colonial militia. He had three sons—Ira Allen, Henry Franklin and Artemas Stephen. Henry Franklin died at the age of twenty-one and Artemas in 1857. The widow and two daughters reside in San Francisco.

Ira Allen Eastman, the subject of this sketch, was graduated at Dartmouth College with the highest honors in the class of 1829. He subsequently pursued the study of law with Judge Willard, of Troy, N. Y., and upon his admission to the bar commenced to practice in that place. Later, compelled by failing health to return to his native State, he in 1834 opened an office at Gilmanton. In 1835 he was chosen clerk of the New Hampshire Senate. In 1836 he was elected a representative from his native town to the State Legislature. He was re-elected in 1837 and again in 1838; and

during the last two years he was speaker of the House, having the distinction of being the youngest man who had ever occupied that position. In 1836 he was appointed the register of probate for Strafford county, which office he held until 1839. In that year he was elected a member of the House of Representatives of the Twenty-sixth Congress. Two years later he was elected to the Twenty-seventh, and



IRA A. EASTMAN.

afterward served with distinction as a member of that body from 1839 to 1843. After his retirement from Congress he was called to the bench, where he served continuously until 1859, being judge of the Common Pleas from 1844 to 1849, of the Supreme Court from 1849 to 1855, and of the Superior Judicial Court from 1855 until his retirement.

In 1863 Judge Eastman was the Democratic candidate for governor of New Hampshire and in 1866 he was appointed by the same party as a candidate for United States senator. In 1858 his alma mater conferred upon him the degree of Doctor of Laws; and in 1859 he was chosen one of the trustees of that institution, in which capacity he served until his death.

From 1834 up to the time of his decease, when not engaged in the performance of offi-

cial duties, he was in the active practice of his profession, in which he ranked among the strong men of the State. The chosen representative of his native town in the Legislature of the State at the age of twenty-seven, the speaker of the House at twenty-eight, a congressional representative of the Granite State at thirty, judge of the Court of Common Pleas at thirty-five, judge of the Supreme Court at forty, and judge of the Superior Judicial Court from the age of forty-seven until that of fifty, he was prominently before the public for nearly half a century. In whatever official position he was called to, he more than filled its requirements, entirely realizing the just expectations of his friends. Unswerving fidelity, tireless industry, and marked ability were all illustrated in his public life. From the beginning to the close of his career he retained the confidence and respect of the people whom he served so long and well. At the age of over threescore years and ten, rich in honors, he passed away, leaving a record unmarred by a stain. Upon the bench he never arrogated to himself a superior wisdom, giving to all a patient and courteous hearing, and making the young practitioner feel that he had "a friend at court" in the person of the judge. In general his treatment of others was uniformly polite. He never betrayed by speech or look any annoyance or irritability: his evenness of disposition well adapted him to the struggles of the forum, where less of temper puts the advocate to a disadvantage, and was of equal importance to him in his judicial capacity, where an even mental balance is essential to the proper administration of justice. His industry and familiarity with legal principles are evinced by the large number of well-considered opinions from his pen which are found in the pages of the State Reports.

Jane Quickemush Eastman, wife of Judge Eastman, was a descendant of a very old Dutch family, which dates back to 1650. Two children were born to them, a son Clarence, who died in 1878; and a daughter, Anna Q., who married Judge David Cross, of Manchester, where she now resides.

LEWIS WHITEHOUSE CLARK, Manchester, associate justice of the Supreme Court of New Hampshire from 1877 to 1898 and chief justice in 1898, was born in Barnstead, N. H., August 19, 1828. He is the son of Jeremiah and Hannah (Whitehouse) Clark and a grandson of Jonathan Clark, who moved to Barnstead from Lee, N. H. His father was a prominent farmer, held several town offices, and also served as a representative to the General Court.



LEWIS W. CLARK.

Judge Clark received his preliminary education in the common schools of his native town and in the academies of Pittsfield and Atkinson, N. H. He was graduated from Dartmouth College in 1850, after a four years classical course, and was principal of the Pittsfield Academy from August, 1850, to December, 1852. Meanwhile he was studying law with Hon. Moses Norris and Hon. Arthur F. L. Norris, both of Pittsfield, and was admitted to the bar of New Hampshire at Laconia on September 3, 1852. In January, 1853, he began active practice in Pittsfield as a partner of A. F. L. Norris, but a year later formed a copartnership with Richard Hayes, a former classmate, which continued about two years. He then practiced alone until April 1, 1860, when

he moved to Manchester, N. H., and formed a partnership with Hon. George W. Morrison and Hon. Clinton W. Stanley (late associate justice of the Supreme Court). The firm of Morrison, Stanley & Clark continued about six years. Afterward Mr. Clark was a partner of Hon. Henry H. Chase, till May 24, 1872, when he was appointed attorney-general of New Hampshire by Governor Weston. He discharged the duties of that office with great credit and ability until August, 1876, when he resumed the practice of his profession in Manchester. August 13, 1877, he was appointed by Governor Prescott an associate justice of the New Hampshire Supreme Court, and served on the bench with ability and satisfaction for twenty-one years, his term expiring by limitation of age August 19, 1898.

On the death of Chief Justice Carpenter in May, 1898, Judge Clark was appointed chief justice and held that office until the date of his retirement.

Few men have occupied a seat on the Supreme bench of the Granite State during a longer period than was allotted to Judge Clark. At the time of his retirement he was not only the chief justice, but the senior member of that court, both as to age and in point of service. His career as a jurist was one that he can look back upon with pride and satisfaction. He is a man of uncommon good judgment, combined with a keen discrimination between right and wrong, and his decisions invariably commanded attention and respect. Plain and unostentatious, he is widely esteemed, while his ability is recognized throughout the State. He is pre-eminently a lawyer. On his retirement from the bench in August, 1898, he resumed the practice of his profession in Manchester, where he holds the appointment of referee in bankruptcy under the new law. In politics he has always been a Democrat. He was a member of the State Legislature from Pittsfield in 1856 and 1857 and subsequently was a candidate for Congress from the second New Hampshire district. He was one of the founders and has continuously been a trustee of the People's

Baptist church of Manchester, where he has resided since 1860.

In December, 1852, he married Miss Helen M., daughter of Capt. William Knowlton, of Pittsfield, N. H., and they have two children: Mary Helen and John Lew.

WILLIAM MARTIN CHASE, Concord, associate justice of the Supreme Court of New Hampshire, is of the sixth generation from Aquila Chase, who came from England to Hampton, N. H., about 1639, and whose descendants have figured conspicuously in New England history for more than 200 years. The judge's grandfather, Joseph Chase, removed from Chester, N. H., to Dorchester, Grafton county, at a very early date, bringing with him his son Horace, who settled in the adjoining town of Canaan. Horace Chase married Abigail, daughter of William Martin, of Canaan, and a granddaughter of Robert Martin, a drummer in the Revolutionary war, who moved from Pembroke, N. H., to Canaan, soon after 1830. Her ancestors were Scotch-Irish, coming from the North of Ireland to Londonderry, N. H., among the early settlers of that colony.

William M. Chase is the son of Horace and Abigail (Martin) Chase, and was born in Canaan, Grafton county, N. H., December 28, 1837. He was reared on the farm and attended the common schools of his native town, and afterward spent one term at the Kimball Union Academy of Meriden. He finished his preparatory studies at the Canaan Union Academy, entered Dartmouth College one year in advance, and was graduated therefrom with honor in 1858. In 1858 that institution conferred upon him the degree of Doctor of Laws. On leaving college Mr. Chase became assistant teacher of mathematics and the sciences at the Henniker (N. H.) Academy, and continued in that capacity about two years during the spring and fall terms. In the autumn of 1859 he also entered upon the study of law in the office

of Anson S. Marshall, of Concord. Afterward he read one summer in the office of William P. Weeks, of Canaan, and was admitted to the New Hampshire bar at Concord on the 21st of August, 1862. He remained in Mr. Marshall's office, and on January 1, 1863, became a member of the firm of Marshall & Chase, which was dissolved by the death of the senior partner on July 4, 1874. For more than ten



WILLIAM M. CHASE.

years this was one of the strongest and best known law firms in the State. Soon after its dissolution Mr. Chase formed a copartnership with Chief Justice J. Everett Sargent, then just retired from the Supreme Court bench, and the firm of Sargent & Chase continued a large and successful practice for about five years, when the senior member withdrew to private life. Mr. Chase and Frank S. Streeter then organized the law firm of Chase & Streeter, which remained in active practice until April 1, 1891, when Mr. Chase assumed his present duties as associate justice of the Supreme Court of New Hampshire, to which office he had been appointed on March 24 by Governor Tuttle.

During a period of nearly twenty-nine years Judge Chase enjoyed a large and successful law practice, which was largely in connection

with railroad and other corporation controversies. For many years he also acted as referee in numerous cases throughout the State. He was clerk and general counsel for the Concord (afterward the Concord and Montreal) railroad for a long time, and devoted the most of the latter part of his practice to this service. Under an act passed July 30, 1889, he was appointed a member of the commission to revise the statutes of the State. This commission, of which he was chairman, made its report to the January session of the Legislature of 1891, and the report was practically adopted in full and went into effect January 1, 1892. He was also clerk of the State Senate during the June session of 1871, a trustee of New Hampshire State Library for several years after 1874 and of the State Normal School from 1876 to 1879, and a member of the committee to examine students for admission to the bar from 1878 to 1891. He was a member of the Board of Water Commissioners of Concord about ten years, a member of the Concord Board of Education for over twenty years, and its president during the latter part of that period. Since January 8, 1875, he has been a director of the First National Bank of Concord, of which he was president for some time. He was elected an honorary member of the Phi Beta Kappa Society of Dartmouth in 1883, has been a trustee of Dartmouth College since 1890, and is a member of the New Hampshire Historical Society and of the New England Historic Genealogical Society.

Judge Chase gained the distinction of being one of the ablest and strongest corporation lawyers in the State. He was always busy, having a large practice which involved important interests, and his unflinching courtesy and profound knowledge of the law won for him universal respect and confidence. He is a man of broad learning, possessed of a remarkable memory, and in every capacity has achieved that eminence which merit alone commands. As a jurist he is dignified, impartial and just. He is a scholar, a student of human nature as well as of books, and a gen-

tleman in the highest sense of the term. His ability and good judgment have been widely recognized. As a citizen he is public spirited, progressive and enterprising, and in the general advancement of the city of Concord, N. H., where he has resided since 1861, he has always been prominent and influential.

March 18, 1863, Judge Chase married Miss Ellen Sherwood Abbott, daughter of Aaron and Nancy (Badger) Abbott, of Concord, N. H., and sister of United States Senator Joseph C. Abbott, of North Carolina. They have one son, Arthur Horace Chase, who was graduated from Dartmouth College in 1886, became a member of the bar in 1889, and has been librarian of the New Hampshire State Library at Concord since January 1, 1895.

MASON WEARE TAPPAN was a native of Newport, Sullivan county, N. H., born October 20, 1817. His father, Weare Tappan, was a man of ability and strong character, prominent as a lawyer, and in his county he early attracted the attention of all New England by his views on the subject of slavery, his house being the headquarters for the anti-slavery lecturer and a well known station of the famous underground railroad.

Mason W. Tappan received the foundation of his education from his father, although he was a student at Hopkinton and Meriden Academies. Selecting the law as his profession, again he was able to receive the benefit of his father's experience and learning; he also studied with Hon. George W. Nesmith, of Franklin. Admitted to the bar in 1841, he gave his undivided attention to the practice of his profession up to the year 1853, when he was elected to the Legislature and re-elected in 1854-55, in which year he was elected to Congress and again was twice re-elected, serving with distinguished ability in the 34th, 35th and 36th Congresses, being the first to break the long established rule of giving a member of Congress but two terms. During

the winter of 1860-61 in the 36th Congress, he was a member of the celebrated select committee of thirty-three, one from each State, to which was referred so much of the President's annual message as related to the then disturbed state of the country, joining Mr. Washburn, of Wisconsin, in a minority report. When that report was submitted, February 5, 1861, he arose and gave an address that swept over New England like a flame and thrilled all the States of the North. The position he took and the part he bore in those unsettled times is referred to and fully commended in James G. Blaine's work, "Twenty Years in Congress." When war did come Colonel Tappan was one of the first to respond to President Lincoln's call for 75,000 men and was given the command of the First N. H. Regiment, to which he was appointed and commissioned by Governor Berry. The



MASON W. TAPPAN.

regiment at once went to the front, forming a part of the brigade of Charles P. Stone. At the expiration of its term of enlistment the regiment was mustered out and Colonel Tappan was appointed colonel of the Fourth Regiment; also elected colonel of the Sixteenth Regiment, both of which he declined, return-

ing to Concord, and resuming the practice of law.

He became associated with Hon. Josiah Minot, Hon. John G. Mengridge and later John Henry Albin. In 1876 he was appointed attorney-general of the State by Governor Cheney and up to the time of his death, which occurred October 24, 1886, he was recognized as one of the leaders of public events, one of the men whose lives fill the pages of history. His trials of civil and criminal cases received the attention of the legal fraternity of the New England States. His ability as an advocate was recognized by all the New Hampshire bar.

LYMAN DEWEY STEVENS, Concord, N. H., is the only son of Caleb and Sally (Dewey) Stevens; a grandson of Parker Stevens, and a great-grandson of William Stevens, who came to New Hampshire from England, and was one of the pioneer settlers of Hampstead, N. H. His mother, Sally Dewey, a native of Piermont, N. H., was the daughter of Deacon Nathan Dewey and a member of the same family as Admiral George Dewey, the hero of Manila.

Mr. Stevens was born in Piermont, N. H., on the 20th of September, 1821. He spent his early life on the parental farm and attending the district schools of the neighborhood, and was fitted for college at the Haverhill Academy in his native State. In 1839 he entered Dartmouth, where he took high rank as a scholar, and from which he was graduated with honor in 1843, having among his classmates Rev. Daniel L. Furber, D. D., of Newton, Mass.; Hon. Harry Bingham, of Littleton, N. H.; Professor John N. Putnam, of Dartmouth College; and others prominent in professional and civil life. On leaving college Mr. Stevens became principal of the academy at Stanstead, Canada, where he remained two years, after which he was assistant to Jonathan Tenney, principal of the Pembroke (N. H.) Academy, for one term. In 1844 he began the study of law in the office

of E. C. Johnston, of Derby Line, Vt. He subsequently studied with Hon. Ira Perley, chief justice of the New Hampshire Supreme Court, at Concord, and was admitted to the bar there in October, 1847.

Mr. Stevens was actively and successfully engaged in the general practice of his profession at Concord, N. H., for a period of fifty-two years, or from the time of his admission to the bar until very recently, when he relinquished



LYMAN D. STEVENS.

his legal business to the care of his son. As counsel in a large number of important cases he displayed that consummate ability and skill which have won for him a recognized leadership and an enviable reputation as a lawyer and citizen. He is one of the two older members of the Merrimack county bar, a man of broad and accurate learning, and a thorough student. His high legal qualifications, his power to grasp and assimilate facts, and his skillful presentation of those facts to a court or jury have brought him into wide prominence. In Concord, where he has resided since 1845, he has always taken an active interest in municipal affairs and contributed materially to the growth and progress of the town. He was elected mayor of the city in 1868 and again in

1869, and during these two terms instituted various reforms and improvements, the most notable, perhaps, being the present sewerage system, which at the time of its inception met with the most determined opposition. Subsequent years, however, have proven the wisdom of his course and established the credit that is due him in pushing to completion this great work—a work which has been of inestimable benefit to the development and health of the city.

For many years Mr. Stevens has devoted much attention to business and financial affairs, in which he has exhibited the same ability and skill that early brought him distinction at the bar. He has been a director of the National State Capital Bank of Concord since May, 1865, and president of the Merrimack County Savings Bank since its organization in 1867, being one of its founders and incorporators. He was also president of the Concord Board of Trade, a director of the Page Belting Company, and officially connected with other corporations and enterprises. In brief, he has always been one of the foremost promoters of every enterprise intended to aid or benefit the community. He was appointed one of the early trustees of the New Hampshire College of Agriculture and Mechanic Arts, was its president at the time of its removal from Hanover to Durham, served as chairman of the building committee, and for some time was president of the board of trustees.

In public and political life Mr. Stevens has been equally active and prominent, holding several offices of responsibility. He was city solicitor of Concord in 1855 and 1856, a member of the New Hampshire House of Representatives from Concord in 1860, 1861, 1866, and 1867, member of the State Senate in 1881, and presidential elector in 1872. He was also a member of Governor Bell's Executive Council. He is a consistent Republican, having affiliated with that party at its organization, and in each of these positions displayed marked ability and magnitude a reputation already well established in legal and business circles. He

is a man of the highest integrity, of great public spirit, and of progress and patriotism, and in every capacity has achieved credit and honor. He was president of the New Hampshire Historical Society from June, 1897, to June, 1899, and a trustee of Kimball Union Academy at Meriden, N. H., for about ten years, and has been treasurer of the New Hampshire Home Missionary Society since 1871 and officially connected with various other organizations and institutions. He was a member of the commission of three which represented New Hampshire at the consecration of the National Cemetery at Gettysburg in November, 1863, and was one of the delegation which represented the New Hampshire Senate at the funeral obsequies of General Grant at New York.

Mr. Stevens was married August 21, 1850, to Achah Pollard French, daughter of Captain Theodore French, of Concord, N. H. Mrs. Stevens died July 2, 1863, leaving two children: Margaret French Stevens and Henry Webster Stevens, the latter of whom is a practicing lawyer and the successor of his father at the Concord bar. On January 20, 1875, Mr. Stevens married, second, Frances Childs Brownell, daughter of William Brownell, of New Bedford, Mass., and they have two children: Fanny Brownell and William Lyman Stevens.

JAMES FRANKLAND BRIGGS, Manchester, N. H., is the son of John and Nancy (Frankland) Briggs, and was born in Bury, Lancashire, England, October 23, 1827. His mother was a near relative of Sir Edward Banks, who had charge of the construction of some of the large bridges across the Thames in London.

When he was less than two years of age the family left their native land and came to this country, landing in Boston on the 4th of March, 1829. They lived successively in Andover, Saugus, and Amesbury, Mass., until 1836, when they settled in Haddamess (now Ashland), N. H., where the father, in company

with two brothers, purchased a woolen mill. The parents were plain, hard-working, thrifty people, imbued with the loftiest attributes of Christian excellence, and gained the respect and confidence of all with whom they came in contact. Young Briggs spent his early life at cloth-making in his father's mill, learning thoroughly every branch of the business, and acquiring, in leisure hours, with the help of



JAMES F. BRIGGS.

his parents, a fair elementary education from such books as fell in his way. At the age of fourteen he spent one term at the Newbury (Vt.) Academy, and later attended the academy at Tilton, N. H., until 1848, working meantime at his trade during vacations to earn the means of defraying his expenses. In that year he entered the law office of Hon. William C. Thompson, of Plymouth, N. H., but owing to his father's death in February was not permitted to long continue the studies which his ambition craved. This affliction left the mother with eight children, six of whom were younger than James, and upon him fell a very large share of their support, as reverses had thrown the family into limited circumstances. With great courage and no small self-sacrifice, he returned to his old employ-

ment as a cloth-maker, but continued to devote every spare moment to his legal education, procuring books from Mr. Thompson for this purpose. At the end of a year he entered the office of Hon. Joseph Burrows, of Holderness. In 1849 the family removed to Fisherville, N. H., and Mr. Briggs continued his legal studies with Judge Nehemiah Butler, of Roseauwen, being admitted to the New Hampshire bar in the spring of 1851, at Concord.

He immediately began active practice at Hillsborough Bridge, N. H., and soon gained a large and successful business. Within a few years he was one of the leading lawyers of the town. As a Democrat he also took a prominent part in politics, and in 1857, 1858, and 1859 represented Hillsborough in the lower house of the New Hampshire Legislature, being elected each time by an almost unanimous vote. In that body he was continuously a member of the judiciary committee, and in 1858 received his party's nomination for the speakership. He acted with the Democracy until 1860, and was nominated for councillor upon its peace-at-any-price platform, but declined the honor, sided with the Union men of the North, and ever since the outbreak of the war of the Rebellion has been an ardent and consistent member of the Republican party. When the Eleventh Regiment of New Hampshire Volunteers was recruited he promptly offered his services, was commissioned regimental quartermaster on the staff of Colonel Harriman, and served through the battles about Fredericksburg, the military operations in Kentucky, and the Mississippi River campaign for about one year. He was then prostrated by the malaria of the southern swamps and compelled to resign and return to Hillsborough, where he soon resumed the practice of his profession.

In 1871 Major Briggs moved to Manchester, N. H., where he has since resided, and where he had Hon. Henry H. Chase as his partner for several years. There he very soon established himself in his profession and entered upon a career that has been both brilliant and

useful. Soon after opening his office in Manchester he was made city solicitor, an office he administered with singular ability and honor. In 1874 he represented Ward Three in the Legislature, and in 1876 he was elected to both the State Senate and to the State Constitutional Convention. In 1877 he was nominated for member of congress without substantial opposition, and was three times elected, each time by an increased majority.

In an article in the *Granite State Monthly* for March, 1883, Henry M. Putney thus speaks of his congressional career:

"In Congress Mr. Briggs has from the first been a faithful, hard-working member, and during the last four years has wielded a great influence. He is always ready to do his share of the committee work, always present to vote and sure to vote right; is tireless in serving his constituents, especially the veteran soldiers, and conscientiously and zealously devoted to the discharge of his duties. In the Forty-fifth Congress he was a member of the committee on patents; in the Forty-sixth, of that on naval affairs; and in the Forty-seventh, chairman of the committee on expenditures in the War Department and a member of the judiciary, civil service reform, and several special committees. He succeeds in Washington as he did at home, by quiet, patient, persistent work which brings about substantial results rather than momentary sensations. No member of the House commands more perfectly the confidence of his associates, and few if any have more influence upon legislation. Committee reports bearing his name have generally been accepted as determining the questions involved, and his few speeches have been extensively republished as complete justifications of the parties whose views he has defended. This was notably true of his speeches on the Southern Election Frauds, the National Banking System, and the Kait Goods bill. His tribute to the memory of his colleague in the House and tent-mate in the army, the late Major Farr, attracted wide attention as a model of graceful eulogy."

Major Briggs declined a fourth nomination to Congress. In 1883 he was again elected to the State Legislature; he was chosen a member of the State Constitutional Convention of 1889, and in 1891 was returned to the Legislature. He served a seventh term in the latter body in 1897, and was elected speaker of the House by a unanimous vote.

Major Briggs is regarded as one of the ablest members of the New Hampshire bar. His sound judgment, his courage and industry, his broad and accurate knowledge of the law, his great force of character have given him a reputation which is by no means confined to his own State. He is especially strong before a court and jury, where his oratorical ability and power to marshal facts have won for him many notable victories. He is a brilliant public speaker, and for several years was one of the leading campaign orators. He has also been active and influential as a projector of numerous enterprises, and has been president of the Hillsborough National Bank, of the Granite State Trust Company of Manchester, and of the Queen City Land and Building Association, and a director of the Citizens' Building and Loan Association and of the People's Gas Light Company, both of Manchester.

In the fall of 1850 Major Briggs was married to Roxanna Smith, daughter of Obadiah and Eliza M. Smith, of New Hampton, N. H., who died January 25, 1888. They had three children, of whom a son and a daughter are living: the former, Frank D. Briggs, was graduated from West Point Academy, served four years and became a lieutenant in the United States army, and is now (1899) mayor of Trenton, N. J.

FRANK SHERWIN STREETER, Concord, son of Daniel and Julia (Wesley) Streeter, was born in Charleston, Vt., on the 3th of August, 1853. He descends on both sides from some of the earliest and most prominent families in New England.

His preliminary education was obtained in

the public schools of his native town and at the St. Johnsbury (Vt.) Academy, from which he was graduated in 1870. The same year he entered Bates College at Lewiston, Me., but in 1871 became a member of the sophomore class of Dartmouth College, and taking a full classical course was graduated therefrom in 1874, having among his classmates Congressman Samuel W. McCall and Samuel L. Powers, of the Boston bar; Hon. Frank N. Parsons, a jus-



FRANK S. STREETER.

tice of the New Hampshire Supreme Court; and Hon. Edwin G. Eastman, attorney-general of New Hampshire. On leaving college Mr. Streeter engaged in teaching, being principal of the Ottumwa high school in Iowa for one year, and upon his return to New Hampshire in 1875 began the study of law at Bath in the office of Hon. Alonzo P. Carpenter, late chief justice of the Supreme Court of that State, whose memoir appears in this work. Mr. Streeter was admitted to the bar in March, 1877, and at once entered upon the active practice of his profession in Orford, N. H., but in October of that year removed to Concord, where he has since resided. He was a partner of John Henry Albion from October, 1877, to September, 1879, when the firm of Albion & Streeter

dissolved, and he formed a copartnership with Hon. William M. Chase, now an associate justice of the New Hampshire Supreme Court, which continued under the style of Chase & Streeter until the appointment of Mr. Chase to the bench on the 1st of April, 1891. Subsequently he became the senior member of the present firm of Streeter, Walker & Hollis.

Mr. Streeter early evinced a preference for that department of the law involving corporate interests, and served as general counsel for the Concord and Montreal Railroad prior to its lease to the Boston and Maine, and he is now counsel for the latter corporation in New Hampshire. His duties in this capacity have brought him into wide prominence. He is one of the best known men and one of the ablest and most skillful lawyers in New Hampshire, and a recognized leader of the bar, and in a large number of important cases he has displayed legal qualifications of the highest order. Being a gifted public speaker, he is especially strong before a court or jury, and as a counselor and adviser is distinguished for his sound judgment and sagacity.

In political affairs he is widely known, and in this connection is one of the most influential Republicans in the State. In 1885 he represented the Fourth Ward of Concord in the New Hampshire Legislature, where he laid the foundation upon which he has built a notable public career. He presided over the New Hampshire Republican State Convention of 1892, was a delegate to the Republican National Convention of 1896, and for several years has been a recognized leader of his party. He is a trustee of Dartmouth College, and since 1893 has served as chairman of its committee on buildings and improvement, under whose supervision the physical side of the institution has been remodelled and rebuilt. Various other organizations and institutions, especially those in his adopted city, have felt the benefit of his directing energies. He is a public spirited and progressive citizen as well as a foremost lawyer, and in every capacity is highly respected and esteemed. He is past

noble grand of White Mountain Lodge, I. O. O. F., a member of Penecook Enfranchisement of the Odd Fellows, and a member and was for several years an officer of the Unitarian Society of Concord; and he is also a member of the Southern New Hampshire Bar Association; a member and past master of Eureka Lodge, F. & A. M., a member of Mount Horeb Commandery, K. T., and a member of the Scottish Rite bodies of Masonry to and including the 32d degree. Few men are better versed or have a wider knowledge of literature, especially of general history, and his private library is one of the largest and best in point of historical and biographical works in the State.

Mr. Streeter was married November 14, 1877, to Lillina, eldest child and daughter of Chief Justice Alonzo P. Carpenter and Julia R., daughter of Ira Goodall, his wife, of Concord, N. H. They have two children: Julia Streeter, born September 8, 1878, now (1899) a student at Bryn Mawr College, class of 1900, and Thomas Winthrop Streeter, born July 20, 1883, now a member of the class of 1900 of St. Paul's School, Concord.

Derry; and finally with Pike & Blodgett, of Franklin, and was admitted to the bar at Concord in March, 1879, and also to the bar of the United States Circuit Court in May, 1879. Immediately after his admission he formed a copartnership with Hon. Austin F. Pike, which continued under the style of Pike & Parsons until Mr. Pike's death in 1886. After that he practiced alone until May 21, 1895, when he entered upon his present duties



FRANK N. PARSONS.

FRANK NESMITH PARSONS, Franklin, associate justice of the Supreme Court of New Hampshire, is the eldest son of Rev. Benjamin F. and Mary A. (Nesmith) Parsons, and was born in Dover, N. H., September 3, 1854. His father was a prominent Congregational minister, holding pastorates in Dover, Nashua, and other cities. His paternal grandfather was a sea captain residing on the coast of Maine.

Judge Parsons was graduated from Pinkerton Academy at Derry, N. H., in 1870, and from Dartmouth College in 1874, and afterward taught school for two years, first as principal of the Franklin (N. H.) High School and subsequently as sub-master of the High School in Nashua. He read law with Hon. Daniel Barnard, of Franklin, later attorney-general of New Hampshire; with Greenleaf C. Bartlett in

as associate justice of the Supreme Court of New Hampshire, to which office he had been appointed by Gov. Charles A. Busiel.

As a lawyer Judge Parsons became widely and popularly known for his ability, integrity, and good judgment. He enjoyed a large general practice, especially in the counties of Merrimack, Belknap and Grafton. In his judicial capacity he has given eminent satisfaction, and has displayed a broad knowledge of the law. He was State law reporter from 1891 to 1895, succeeding Judge William S. Ladd, and in 1893 and 1894 he was also a member of the Executive Council. As a citizen he is public-spirited, progressive, and and enterprising.

He was largely instrumental in bringing about the incorporation of the city of Franklin, N. H., and served as its first mayor in 1895. He is a member of the New Hampshire Historical Society and of the Delta Kappa Epsilon fraternity.

In October, 1880, he married Miss Helen F., daughter of his law partner, Hon. Austin F. Pike, of Franklin, N. H.

EDWIN F. JONES, Manchester, N. H., is the son of Edwin R. and Mary A. (Farinham) Jones, and was born April 19, 1859, in Manchester, N. H., where he has always resided. There he received his preparatory education, passing through the grammar and high schools. He was graduated from Dartmouth College in 1880, where he took high



EDWIN F. JONES.

rank, and displayed those qualities which have won for him an honorable standing at the bar and respect and esteem as a citizen.

On leaving college Mr. Jones entered the law office of Hon. David Cross in Manchester, and there pursued his legal studies, being admitted to the New Hampshire bar in August,

1883. Immediately afterward he formed a partnership with William J. Copeland, of Manchester, which continued under the style of Copeland & Jones until Mr. Copeland's death in August, 1886. Since then he has practiced alone, devoting himself with great success to a large and growing clientele.

Mr. Jones has also been active and influential in public affairs. He was elected assistant clerk of the New Hampshire House of Representatives in 1881 and was promoted to the clerkship of that body in 1883, and held that office again in 1885. His clear and accurate knowledge of the intricate details of parliamentary rules caused a demand for his services by every member of the House, while his genial courtesy and unflinching devotion to duty made him very popular. This work also contributed in no small degree to the foundation upon which he has built a successful legal career. In January, 1887, he was elected city solicitor of Manchester, and by successive re-elections served in that capacity for twelve years, declining a re-nomination in January, 1899. He discharged the duties of this office with singular ability and fidelity, and to the great benefit of the city. From July, 1887, to April, 1895, he was also treasurer of Hillsboro county. He was a member of the Manchester School Board for several years, and has long been prominent and active in political campaigns, being recognized throughout the State as a speaker of force and ability. As a citizen he is public spirited and enterprising, enthusiastic in promoting the best interests of the community, and highly respected and esteemed. He enjoys the confidence of his fellow-townsmen, and is prominently connected with some of the leading institutions of his native city.

Mr. Jones was married on the 21st of December, 1887, to Nora F. Kennard, daughter of Joseph F. Kennard, of Manchester, N. H., and they have one daughter, born July 17, 1899.

JAMES PATTERSON TUTTLE, Manchester, N. H., county solicitor for the county of Hillsborough since April, 1893, is the son of Captain James Moore and Rachel Patterson (McNeil) Tuttle, and a grandson of Jedediah and Jane (Warren) Tuttle and of Deacon Peter and Mary (Stiles) McNeil. On both sides he comes from Revolutionary stock. His paternal ancestor, John Tothill, came from Devonshire, England, to Dover, N. H., in the latter part of the seventeenth century, and was one of the pioneers of the town. His grandfather, Jedediah Tuttle, was a native of Andover, N. H., but spent most of his life in New Boston, in the same State, where his wife, Jane Warren, was born. Capt. James Moore Tuttle was born in New Boston on the 8th of November, 1821, and died there February 19, 1884, in his sixty-third year, having been a lifelong farmer and lumberman. As commander of the New Boston company in the old State militia he was popularly known as Captain Tuttle, and in every capacity he won and maintained the confidence of his fellow-citizens. Deacon Peter McNeil, father of Mrs. Rachel P. Tuttle, was also a lifelong resident of New Boston, and a farmer. He was of Scotch-Irish descent, his ancestors coming from the north of Ireland to Londonderry, N. H., in the early settlement of that place, and holding for generations the Presbyterian faith.

James P. Tuttle was born in New Boston on the 17th of July, 1856, and has always retained his legal residence in that town. After attending the common schools of his birthplace he entered Frauncestown Academy in New Hampshire, then under the principabship of Prof. James E. Vose, and when Mr. Vose was appointed professor of Greek and mathematics in Cushing Academy at Ashburnham, Mass., Mr. Tuttle went with him, and there completed his preparatory studies in the class of 1877. He did not take his final examinations and diploma, however, until 1880, and then at the request of Professor Vose, who had become principal of the institution. While

attending these academies he taught school winters in Goffstown, Andover, New Boston, Amherst, and Weare, and afterward was for two years principal of the high school at Townsend, Mass., achieving marked success, and developing by practical experience those qualities upon which he has built an honorable career at the bar. In 1880 he spent nine months in the study of medicine at Palmer,



JAMES P. TUTTLE.

Mass., with Dr. John K. Warren, now of Worcester, and there made the acquaintance of men at the bar whose influence led him to adopt the law as his lifework—a work for which he was well qualified by nature as well as by taste and inclination.

In the spring of 1881 he began his legal studies in the office of Judge David Cross at Manchester, N. H., and a year later continued them with Gen. John H. Andrews, in the same city, until the fall of 1884, when he entered the Boston University Law School, from which he was graduated with the degree of LL.B. in June, 1885. In the mean time he served for two years, from March, 1881, to March, 1883, as superintendent of schools of the town of New Boston, and in this capacity gained a valuable experience. He was ad-

mitted to the New Hampshire bar at Concord on the 29th of July, 1885, and in the following September opened an office in Manchester, where he has since been actively and successfully engaged in the practice of law, and where he has for some time spent his winters, retaining, however, his residence in his native town.

Mr. Tuttle has achieved a position of recognized prominence at the bar, and is regarded as a lawyer of marked ability, of great force of character, and of broad and accurate learning. In a number of important cases he has displayed high legal qualifications. In the fall of 1892 he was elected county solicitor for the county of Hillsborough, and has since held that office, having been re-elected in 1894, 1896, and 1898 for terms of two years each. Since he assumed its duties in April, 1893, he has maintained a reputation already well established. In politics he is a Republican. He was representative from New Boston to the New Hampshire Legislature in 1887, and served on the committee on the revision of the statutes. He is a member of Ridgely Lodge and Woonahuset Encampment of the Odd Fellow fraternity, of the Ancient Order of United Workmen, and of the Hillsborough County Bar Association, and has always taken a prominent part in the affairs of his town and county.

Mr. Tuttle was married January 1, 1887, to Lizzie Jane Buntin, daughter of John D. and Elizabeth (Holden) Buntin, of Dunbarton, N. H. They have four daughters: Dora Morton, Rachel Winifred, Florence Elizabeth, and Margaret Esther.

SALMA HALE. A. M., Keene, son of David and Hannah (Emerson) Hale, was born in Alstead, N. H., on the 7th of March, 1787. He was descended through a long line of New England ancestors, from Thomas Hale of Walton-at-Stone, Hertfordshire, England, who came to Newburyport, Mass., in 1635. He received an ordinary English education,

and at the age of thirteen began to learn the printer's trade in the office of the *Farmer's Museum*, a newspaper of note at Walpole, N. H. When eighteen he was editor of the *Political Observatory*, a weekly issued in the same town. Soon afterward he took up the study of law there with Roger Vose, and subsequently continued his legal education in the offices of Samuel Dinsmoor and Phineas Hen-



SALMA HALE.

derson at Keene, in his native State, where he was appointed clerk of the Court of Common Pleas for Cheshire county in 1812. To this position was added the clerkship of the Superior Court in 1817, and Mr. Hale continued to discharge these duties, through sundry changes of the court, with the exception of a few years, until 1834.

During this period he also took an active part in political affairs. In 1816 he was elected to Congress from New Hampshire and served from March, 1817, to March, 1819, declining a re-election. In 1823 he was elected a representative and in 1824 a senator to the New Hampshire Legislature. He was again a representative in 1845 and a senator in 1846. He was also secretary to the Commissioners appointed to settle the boundary line between

the United States and the British Provinces under the Treaty of Ghent. In these various positions he displayed decided ability and statesmanship, excellent judgment, and great capacity, and filled each of them with marked success and honor. In 1834 he was admitted to the New Hampshire bar and entered upon the practice of his profession in Keene, where he remained until his death, November 19, 1866.

Mr. Hale came to the bar possessed of the great advantage of a thorough knowledge of the forms and methods of legal procedure and of a wide acquaintance. His position as clerk of the courts and his public service had given him a valuable and practical experience. He did not engage especially in the trial of causes, but was noted as a studious, prudent, judicious counselor, and during a professional career of thirty-two years achieved eminent success. He was essentially a scholar in habits and taste, a great reader, familiar with the French and other modern languages, and a writer whose correct and elegant style won for him a considerable reputation. He contributed numerous articles to the newspapers and periodicals, compiled the "Annals of Keene," which passed through two editions, wrote "The Judicial History of New Hampshire before the Revolution" for the Law Reporter for October, 1855, and was the author of a school history of the United States, now long since superseded, but widely known in its day, which won the prize of \$400 offered by the American Academy of Languages and Belles-Lettres for the best work of that character. This history long held its place in the schools of this country and was republished abroad several times, including four editions in London and one in Scotland. Mr. Hale was deeply interested in current events and all public questions, was modest and retiring in manner, and was regarded as one of the best informed and most interesting men of his section. He was an early member and president of the New Hampshire Historical Society. He twice received the honorary degree of A. M., first from the Uni-

versity of Vermont in 1824, next from Dartmouth College in 1849. The latter degree is in one way noteworthy, as it recalls that in 1816 the recipient of the degree had been one of the trustees of "Dartmouth University" under the act of the Legislature of New Hampshire which led to the famous Dartmouth College case and to so much acerbity. Apparently in 1849 the breach was healed.

Mr. Hale married Sarah Kellogg King, and had two children: Hon. George Silsbee Hale, a leading lawyer of Boston, whose memoir appears in this work, and Sarah K., who married Hon. Harry Hibbard, an eminent lawyer of Bath, N. H.

HENRY ADAMS BELLOWES was born in Walpole, N. H., October 25, 1803. His father, Major Joseph Bellows, was the son of Gen. Benjamin Bellows, whose father was Colonel Benjamin Bellows, the founder of Walpole, N. H. His mother, Mary Adams, was the daughter of Rev. Zadriel Adams, of Lunenburg, Mass., cousin of John Quincy Adams. Among his kinsmen were Thomas Bellows, for many years sheriff of the county of Cheshire, and the late Rev. Dr. Henry W. Bellows, of New York city, for many years pastor of All Souls church in that city.

Henry A. Bellows studied law with Hon. William C. Bradley, of Westminster, Vt., was admitted to the New Hampshire bar in 1826, and began practice in Walpole, but removed to Littleton, N. H., in 1828, where he continued the practice of law until 1850, when he removed to Concord, N. H., which was his home during the remainder of his life. During his long and successful career at the bar he tried cases in every county in the State except Strafford. For many years prior to his elevation to the bench he was engaged in the most important causes and opposed to the ablest counsel in the State. It is doubtful if any other New Hampshire lawyer has ever realized so little pecuniary profit from so much

business. He kept himself poor amid a large practice by his exquisite consideration for the wants and means of others, and the conscientious fidelity with which he attended to every case. He had not the heart to trouble his clients with troublesome collections.

In 1859, in accordance with the general desire of the profession, he was appointed an associate justice of the Supreme Judicial Court,



HENRY A. BELLOWES.

and in 1860 he was promoted to the chief justiceship, which he held until his death. He proved an eminently useful judge, both at trial terms and law terms. Of all his rulings at *nisi prius* it is believed that not more than two were reversed by his associates. He was a patient listener, with a temper not easily ruffled, and spared no pains to arrive at correct conclusions. No litigant could have gone out of court without feeling that Judge Bellows had made every exertion to give his case a fair hearing.

His opinions, contained in fourteen volumes of the New Hampshire Reports (33 to 52) furnish abundant evidence of his legal knowledge and judicial capacity; but his official associates alone were aware of the full amount and worth of his labors; indeed, no man thoroughly

understood him as a lawyer and judge who had not been with him in the discussions and deliberations—the anxious discussions, the protracted deliberations—of the consultation room. No where else as there were seen his accurate learning and cautious judgment. He was reasonably tenacious of his opinions when once formed, and he had a right to be, for they were formed after the most patient investigation and the fullest deliberation. He was not a rapid worker, but he had a marvelous genius for industry. His industry was incessant, he husbanded every day and hour of his life, as if lent him on a usury for good.

Socially Judge Bellows was one of the most delightful of men. He had the courtly manners of the old school, but his courtesy far exceeded the requirements of men of good breeding. Benevolence, kindness and universal charity were all stamped upon his countenance and manifested in his every word and action. Whether a lawyer or a Unitarian can be a Christian is a question to which the life of Judge Bellows affords an emphatic answer. If purity, humility, willing and cheerful obedience to the teachings of Jesus Christ, a life in accordance with the spirit of the gospel, and a heart full of love for God and man, are the tests of Christianity, then it is safe to say that Judge Bellows was a Christian, and such a Christian as the world seldom sees.

On Saturday, March 8, 1873, he finished a trial term at Dover and returned to his home in Concord, apparently in usual health. A slight indisposition caused a physician to be summoned, but no one apprehended any serious result. On Tuesday morning, March 11, it was found that he had passed away in the night.

WILLIAM J. BELLOWES was born in Rockingham, Vt., July 3, 1817. His father, Major Joseph Bellows, was the son of Col. Joseph Bellows, grandson of Col. Benjamin Bellows, the founder of Wulpole, N. H.

His mother, Mary Adams, was a daughter of Rev. Zabdiel Adams, late of Lunenburg, Mass., who was a cousin of John Quincy Adams. Among his kinsmen were Thomas Bellows, for many years sheriff of Cheshire county, N. H., and the late Dr. Henry W. Bellows, of New York, for many years pastor of All Souls church and also president of the Sanitary Commission during the Rebellion.



WILLIAM J. BELLOWES.

From 1834 to 1841 Mr. Bellows resided in Boston and occupied a permanent position in a large wholesale establishment. In 1841 he went to Littleton, N. H., his present home, and commenced the study of law with his brother and was admitted to the Grafton county bar in 1844. He then entered into partnership with his brother, under the firm of H. A. and W. J. Bellows, and continued with him until 1850, during which time they conducted a very large and successful law business. In 1850 his brother removed to Concord, N. H., and William J. continued the business alone until 1854, when he formed a partnership with the late John Farr, which continued with a large practice until 1860, when it was dissolved. In 1861, without solicitation on his part, he was appointed postmaster at Littleton,

N. H., which position he held without objection for seven years.

On the breaking out of the war of the Rebellion, not being physically able to take the field, but being a staunch Republican and desiring to render what aid he could in sustaining the government and the integrity of the Union, he purchased the *People's Journal*, published at Littleton, and devoted its pages with much earnestness and ability to the advocacy of the Union cause, urging a patriotic support of the administration without regard to party affiliations. At the close of the war, having no political ambitions, and being desirous of promoting the growth of Littleton, to which he had always devoted much of his time, and being connected with many important business affairs, he gradually left off the practice of law and devoted his time to those interests, and especially in aid of the large and important business interests in which his sons, William H. Bellows and George S. Bellows, were engaged.

JOHN HENRY ALBIN, Concord, N. H., is the son of John and Emily (White) Albin, and was born in West Randolph, Vt., October 17, 1843. He prepared for college at the high school in Concord, N. H., and completed a four years' course at Dartmouth, graduating therefrom in 1864, with membership in the Zeta Psi fraternity.

On leaving college Mr. Albin entered the law office of Hon. Ira A. Eastman in Concord, where he early displayed those qualities which have won for him a high standing in the profession. He was admitted to the bar in October, 1868, and in the following year became a partner of Judge Eastman under the firm name of Eastman & Albin, in Concord, where he has continued to practice to the present time. In December, 1869, Samuel B. Page removed to Concord from Warren, N. H., to become a partner in the firm, which was changed to Eastman, Page & Albin, and which contin-

ued until 1874, when it was dissolved by mutual consent. Mr. Albin then associated himself with Hon. Mason W. Tappan, afterward attorney-general of New Hampshire, and after Mr. Tappan's death he became a partner of Nathaniel E. Martin. The firm of Albin & Martin was dissolved January 1, 1899, and Mr. Albin is now practicing alone.



JOHN H. ALBIN.

In 1875 Mr. Albin removed to Henniker, N. H., and the next year he represented that town in the State Legislature, serving on important committees, and being one of the leading and most influential members of that body. This was his third term in the Legislature, as he had represented the Fifth ward of Concord in 1872 and 1873. He returned to Concord in 1891, and has since resided in that city. Mr. Albin has been very active in developing and advancing the best interests of Concord. He was largely instrumental in building the Concord street railway, of which he has continuously been the president and principal owner, and is also president of the Sullivan county railroad, and a director of the Connecticut River and Vermont Valley railroad companies. In the Independent Order of Odd Fellows he has long been prominent and in-

fluential, having filled all the chairs in the Grand Lodge of New Hampshire, and serving as grand master in 1879 and 1880, and subsequently as grand representative to the Sovereign Grand Lodge of the United States for five years, and as grand marshal of the latter body for two years. He represented the State of New Hampshire in the Sovereign Grand Lodge at its sessions in Cincinnati, Baltimore, Minneapolis and Boston, and is the author of the ritualistic work of the Patriarches Militant, which is the military branch of Oddfellowship, and it was largely through his efforts and influence that that ritual was established. His labors in this connection have given him a national reputation and distinguished him as one of the foremost members of the order.

As a legal adviser and advocate Mr. Albin is widely known. He is a man of acknowledged professional ability, of great sagacity and unquestioned integrity, of broad and accurate learning, and of fine scholarly attainments, and has achieved a leading position at the bar of his State. His opinions are received with respect and confidence, and have won for him an honorable place at the bar of New England. Endowed with an immense capacity for hard work, he has achieved, by his own efforts, eminent success and in the threefold capacity of lawyer, business man, and citizen is highly esteemed. He is unassuming, a polished and educated gentleman, and public spirited, patriotic, and enterprising.

Mr. Albin was married on the 5th of September, 1872, to Georgina A. Modica, daughter of Joseph and Achsah Modica, of Henniker, N. H. They have two children; Henry Allison and Edith Gertrude, the former being now (1899) a student at the Massachusetts Institute of Technology in Boston and the latter a student at the Bradford (Mass.) Academy.

DAVID CROSS, LL.D., Manchester, judge of probate for Hillsborough county from 1856 to 1874, was born in Weare, N. H., July 5, 1817, and is the youngest son of David

Cross and Olive Kimball. He is a descendant of Thomas Cross, of Bradford, Mass., whose son, Abiel Cross, was born there, but moved to and died in Salem, N. H. David Cross, son of Abiel, was born in Salem on June 19, 1772, moved to Weare, N. H., and died there March 7, 1856, after a long and useful life. Judge Cross's mother, Olive Kimball, was the daughter of Thomas and Alice (Lovejoy) Kimball, of Pembroke, N. H., and was born June 19, 1782, and died April 3, 1871. She was of English descent, her ancestors coming to Ipswich, Mass., about 1636.

Judge Cross received his early education in the district schools of his native town. He taught school, and in 1834 entered Pembroke Academy and afterwards studied at Hopkinton Academy. He was also a student at Phillips Academy, Andover, Mass., and in the fall of 1837 entered Dartmouth College, from which institution he was graduated in regular course in 1841, with membership in the Phi Beta Kappa and with an oration at commencement. Deciding on the profession of the law he studied in the office of Willard & Raymond in Troy, N. Y., with Sidney Bartlett in Boston, and at the Harvard Law School, and in 1844 came to Manchester, N. H., where he has since resided. He was a student in the office of Hon. Daniel Clark for a short time, and in December of the same year he was admitted to the bar.

In January, 1845, he began practice in Manchester on the spot where he has ever since maintained an office. His practice has been varied and extensive. For many years he argued jury cases and won a notable position as an advocate, although of late years he has not attempted this line of work. The New Hampshire Law Reports show a great number of important cases in which he has been engaged. He has been counsel for many corporations, and now is the regular counsel of the Manchester Mills, the Amoskeag Manufacturing Company, the Amory Manufacturing Company, the First National Bank, and the Merrimack River Savings Bank. He has had more cases involving tax questions and flowage

rights than any other lawyer in his State. For many years he was the counsel for the Boston and Maine Railroad, and conducted its business before the New Hampshire Legislature where contests with other railroads were numerous and bitterly fought. He has been associated as a partner at various times with Hon. Elijah M. Topliff, Hon. Ira A. Eastman, Hon. Henry E. Burdham, and Hon. David A.



DAVID CROSS.

Taggart, and no office in the State for the last forty years has had so many law students as his. He has always manifested an interest in all matters tending to advance the moral and material interests of his city and State. In 1852 and 1853 he was city solicitor, and in 1848, 1849, 1856, 1876, and 1877 he was a member of the Legislature from Manchester. In 1856 he was appointed judge of probate for Hillsborough county, which office he held till 1874. He was also United States pension agent for the district of New Hampshire from 1865 to 1872. During all the time he held these offices he continued in the active practice of law. The labor in his profession from 1865 to 1872, with his other business, was severe, yet he discharged his official duties creditably and honorably. Judge Cross was one of the direct-

ors, from 1855 to 1865, of the Merrimack River State Bank, and has been one of the directors and vice-president of the First National Bank of Manchester since its organization in 1865 and is now its president. He has also, since 1861, been one of the trustees of the Merrimack River Savings Bank, and is now its vice-president.

Judge Cross is endowed with a sound physical constitution, strong and active mental powers, good judgment, and excellent common sense. Add to these a cheerful temper, a cordial and engaging manner, and a genial good nature, and we have the secret of his success. In politics he has always been an ardent Republican, and was a delegate to the Baltimore Convention of 1864 that nominated Lincoln and Johnson, and a member of the State Constitutional Convention of 1889. He is the only surviving member of the first city government of Manchester in 1846, when he represented old ward two in the Common Council. He has been president of the Hillsborough County Bar Association for the past twenty years, and was one of the founders and the first president (in 1892) of the Southern New Hampshire Bar Association. In 1891 Dartmouth College conferred upon him the honorary degree of LL.D.

He was married in October, 1858, to Anna Quackenbush Eastman, daughter of Hon. Ira Allen Eastman, of Concord and later of Manchester, whose memoir appears in this work. Of their five children two died in infancy. Clarence Eastman Cross died January 11, 1881, being within eleven days of twenty-one years of age. He was a member of the junior class in Dartmouth College, and a young man of much promise. He seemed to have inherited from his father and maternal grandfather a taste and ability for the law, and his character and talent gave high hope of success. Allen Eastman Cross, eldest of the two surviving children, was born December 30, 1864, was graduated from Amherst College in 1886 and from Andover Theological Seminary in 1890, and is now pastor of a flourishing Congrega-

tional church in Springfield, Mass. Edward Winslow Cross, born July 21, 1875, was graduated from the Manchester High School, from Phillips Andover Academy, and from Amherst College, and is now (1899) a student at the Harvard Law School.

ROBERT J. PEASLEE, judge of the Supreme Court of New Hampshire, residing at Manchester, was born at Weare, N. H., September 23, 1861, and is a son of Robert and Persis B. (Dodge) Peaslee. His boyhood was passed on the parental farm, where he acquired those habits of industry and studiousness that have enabled him to rise, while still young in years, to a high judicial station. Receiving his education in Cushing Academy at Ash-



ROBERT J. PEASLEE.

burnham, and Arnis Academy at Shelburne Falls, he took up the study of law in the office of Burdham & Brown, finishing in the Boston University Law School in 1886, in which year he was admitted as a member of the bar and at once began practice in Manchester.

Judge Peaslee's progress in his profession was such that he was called to the office of

judge of the Supreme Court of the State of New Hampshire in 1898.

He was married on September 12, 1893, to Nellie D. Kimball.

EDWIN G. EASTMAN, attorney-general of the State of New Hampshire, was born in Grantham, N. H., November 22, 1847. He obtained his education in the common schools, in Kimball Union Academy at Meriden, and in Dartmouth College. He read law with Hon. A. P. Carpenter at Bath, N. H., and was admitted to the bar in 1876. He had already taken an active interest in public affairs and in the year of his admission to practice represented Grantham in the State Legislature. Early in his law practice he attained high



EDWIN G. EASTMAN.

standing at the bar. In 1889 he served in the State Senate from the Twenty-first district. He served also two terms as solicitor for the county of Rockingham, with marked success, and upon the death of Hon. Daniel Barnard in 1892, was appointed attorney-general of the State, which high office he still holds.

During his period of practice Mr. Eastman

became widely known as a lawyer of acknowledged ability and learning, and his practice was extensive and varied in both civil and criminal cases. As an advocate he is vigorous, logical and impressive; as a counselor, frank, conservative, sagacious and reliable. In the legislative halls he was recognized as an able and efficient member, while in his present high station his course has been such as to meet the expectations of the State. Mr. Eastman has resided in Exeter since 1876, and was the law partner of the late Gen. Gilman Marston until the latter's decease in 1890. After that the firm of Eastman, Young & O'Neill was formed, which was dissolved in 1898.

In 1877 Mr. Eastman was married to Elma E., daughter of L. F. Dodge, of Newport, N. H.; she died in 1880. In 1885 he married Margie A., daughter of William W. Folliussee. They have one son, Edwin W., and two daughters, Helen M. and Ella F.

CHARLES HENRY BURNS, lawyer, Wilton, was born in Milford, N. H., January 19, 1835, son of Charles A. and Elizabeth (Hutchinson) Burns. The Burns family is of Scotch origin. The pioneer ancestor, John Burns, was born in 1700, came to this country in 1736, and settled in Milford in 1746, where he died in 1782. His descendants have lived there ever since. Elizabeth Hutchinson traces her descent from Barnard Hutchinson, who in 1282 was living in Cowham in the County of York, England. From his eldest son, John, Richard Hutchinson, the pioneer ancestor of Mrs. Burns, was descended. Richard came to America and settled in Salem, Mass., in 1635. Nathan Hutchinson, a descendant of Richard, was one of the first settlers on the territory within the present limits of Milford. He was the great-grandfather of Mrs. Burns.

The subject of this sketch was educated in the common schools of his native town, which were of an unusually high order. He then attended the Appleton Academy in New Ips-

wich, graduating in 1854. He read law with Col. O. W. Lull in Milford and was graduated from the Harvard Law School in 1858. In May of the same year he was admitted to the Suffolk bar, and in the following October was admitted to practice in the New Hampshire courts. In January, 1859, he commenced



CHARLES B. BURNS.

practice in Wilton, where he has remained ever since, though a steadily increasing business has necessitated his opening an office in Nashua of late years. He has been connected with many of the most notable cases tried in the State courts. He has been one of the counsel in all of the extensive litigation of the railroads of New Hampshire for the last fifteen years. He has been foremost among counsel in the legislative controversies between railroads during the same period. While he has been prosecuting attorney in the State and Federal courts for many years, he has also defended successfully in several celebrated capital cases, notably in *State v. Brown*, who was over eighty-four years of age, charged with killing his neighbor Wood, who was seventy years old.

Mr. Burns is especially distinguished as an advocate, strong, persuasive, and successful.

Perhaps he has no superior in the State as a polished and brilliant platform orator. Although firmly attached and wedded to his profession, he is a man of scholarly tastes, and has, on important occasions, delivered addresses upon a variety of subjects, many of which have been published. He gave the address at the dedication of the Miller Park, which was an interesting account of the life and achievements of General Miller, the hero of Lundy's Lane; an address at the dedication of the Soldiers' and Sailors' monument at Nashua; an address upon Matthew Thornton at the dedication of the Thornton monument; the Centennial address at Milford, his native town, the address at the laying of the corner stone of the Milford town house; at the dedication of the town hall at Greenville; at the dedication of the Masonic building at Wilton, and many other addresses. He has one of the finest law and general libraries in New Hampshire. In politics he has been a Republican since the organization of the party. His father was a strong worker in the anti-slavery movement, and the son early evinced an interest in public affairs. For years he has been one of the party's ablest orators. He has delivered speeches in hotly contested elections on many occasions from the same platform with Blaine, Garfield, Governor Lang, Fred Douglass, and many other distinguished men, in Maine, Massachusetts, New Hampshire, and elsewhere. In 1864 and 1865 he was elected treasurer of Hillsborough county, in 1873 and 1879 he was a member of the State Senate, serving both terms as chairman of the judiciary committee. Governor Cheney appointed him solicitor for Hillsborough county in 1876, and he was twice re-elected to that office. He was a delegate to the Cincinnati National Convention of the Republican party in 1876, representing New Hampshire on the committee on resolutions. He presided over the Republican State Convention in 1878, making a strong speech against the greenback craze, which attracted national attention. In 1879 he was made judge advocate-general on the staff of

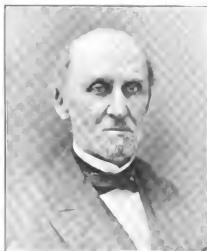
Governor Hend. He was appointed United States district attorney for New Hampshire in 1881 and 1885. Although he had not entered the field as a candidate, he had strong support in the senatorial contest of 1883. He is a member of the New Hampshire Historical Society and the New England Historical and Genealogical Society; an M. A. of Dartmouth; and a thirty-second degree Mason. He is president and director in several banks. Mr. Burns married, January 19, 1856, Sarah N. Mills, of Milford. Of their eight children four are living, two sons, and two daughters. One son, Charles A., is in business, and the other, Ben E., a member of the Suffolk bar, and practicing in Boston.

WILLIAM BURNS, of Lancaster, New Hampshire, was born at Hebron, Grafton county, N. H., April 25, 1821. His father, Robert Burns, as the name indicates, was descended from Scottish ancestry, and was one of the most prominent physicians of the State and a representative in the Federal Congress; he died at an advanced age in Plymouth.

William Burns prepared for college at the academies of Plymouth and New Hampton, and entered Dartmouth College at the age of sixteen years, graduating with the class of 1841. Having determined to pursue the profession of law, he entered the office of Judge Leonard Wilcox, of Orford, passed through the Harvard Law School, graduating in 1843. His first practice was in Littleton, N. H., but in May, 1846, he removed to Lancaster, where he remained a prominent figure until his death on the 24 of April, 1885.

Mr. Burns was happily endowed by nature not alone for the exacting duties of the profession to which he belonged, but also for the responsibilities of the many positions to which he was subsequently appointed or elected. Governor Williams gave him his first appointment upon his personal staff with the rank of

colonel in 1847. From the same official he received also an appointment to the office of solicitor of Coos county. In 1854 he passed through a serious railroad collision in which he nearly lost his life and from the effects of which he never fully recovered; but his public life continued with scarcely an interruption. He served in the State Senate in 1856 and 1857, having been elected from the Twelfth



WILLIAM BURNS.

district, and was nominated by his party for Congress in 1859, 1861, and 1863. In 1876 he was a member of the Constitutional Convention, in which his wise and conservative judgment and sound legal learning were highly respected. In that year (1876) Mr. Burns relinquished active practice on account of failing health, although he was afterwards consulted in many important cases. As a lawyer Mr. Burns was an incessant worker and when he appeared in a case, was always fully prepared to meet every issue in the interest of his client. Personally he was a man whom it was a pleasure to meet. His courtesy and kindness were neverfailing.

Mr. Burns married in 1844, Clementine E., daughter of Lyman and Esther (Bugbee) Hayes, of Orford, N. H.

CHARLES BENJAMIN GAFNEY was born at Ossipee, N. H., September 17, 1843.¹ He was an only child and he was left an orphan at the death of his mother when he was a boy of only four years. As an orphan boy, however, he found sincere friends among the good country folk of his native and adjoining towns, forming friendships which in his later and successful years, he never forgot. Among his staunch friends was his guardian, Sanborn B. Carter, esq., of Ossipee, then one of the leading members of the bar of Carroll county. He was under the care of an aunt for a time, and from the age of eleven to fourteen lived at the home of Jacob Ballard, of Wakefield. His inheritance consisted principally of a strong physique, a generous, noble-hearted disposition and a vivacious temperament.

He was educated at the public schools in Ossipee, at the academies in Sandwich, N. H., and Lebanon, Me. He then pursued the study of law under the tutorage of Mr. Carter, his guardian, and with Hon. Charles W. Woodman, of Dover.

Although less than eighteen years of age when the Civil war broke out, he was early to enlist. On September 27, 1862, he was enrolled in Company A, 13th N. H. Vols., under the command of William Grantman. He was enlisted by John W. Sanborn, who was acting as recruiting officer, with whom he then formed an acquaintance which ripened into friendship, which friendship endured during his life. He was mustered into the service as second lieutenant. He was promoted to be first lieutenant June 1, 1863. He participated in battles at Fredericksburg, Drury's Bluff, Cold Harbor, and in numerous other important engagements, and was seriously wounded at the battle of Petersburg, June 13, 1864, by a minie ball which he carried in his thigh for seventeen years.

When his wound had partially healed he returned to the front and was aide to Generals Roulston and McCullom of the First Division,

Eighteenth Army Corps, and to General Ripley of the First Brigade, Third Division, Twenty-fourth Army Corps. On May 30th, 1865, he was commissioned captain for gallant conduct and so mustered out at the close of the war.

Although constantly reminded of his military experiences by the presence of this wound for so many years, he seldom talked of his military exploits except in some jocose way. Notwithstanding his creditable record as a soldier he never spoke boastingly of it. He often expressed no little contempt for those, who, having performed little service for their country, sought preferment by great claims of loyalty.

At the close of the war he accepted a position as clerk in the Treasury Department at Washington. There he formed the friendship of Hon. A. H. Cragin, then senator, and Jacob H. Eln, a congressman from this State, and many other other-eminent public men, gaining much valuable experience which was of practical value to him later in life. He served for several years as clerk of the Naval Committee of U. S. Senate, of which Senator Cragin was chairman.

During this period he pursued his study of law at the Columbian Law School and was graduated from that institution in 1868. By reason of the friendship formed with Hon. Jacob H. Eln he came to Rochester in 1871, and formed a copartnership with Joseph H. Worcester for the practice of the law, for the next two years dividing his time between Rochester and Washington. After 1873 he gave his exclusive attention to the practice of his profession until January, 1890, when he accepted the position of secretary to Hon. Frank Jones, president of the Boston and Maine Railroad, and spent the most of his time until October, 1893, in Boston. He then returned to the practice of his profession, and in May, 1896, was appointed judge of probate for Strafford county, which position he held until his death. The writer was associated with him in the practice of the law after 1893.

¹ Prepared for this work by Leslie P. Snow

He was twice married. His first wife was Mary Ellen Grant, of Ossipee. She was an invalid and great sufferer many years prior to her death in 1888. His second wife was Ida A. Peavey, of Farmington. She, too, for the last few years suffered from ill-health. He was very fond of home life and the cloud of sickness rested heavily upon him. But amidst it all his kind and patient cheerfulness was well worthy of remark and emulation. Within eight days of his death, and on the last day he was able to sit up, against the advice of his physicians and friends, he held his regular term of Probate Court.

He showed much interest in secret orders, and especially in Masonry. He was raised a Master Mason by the Charter Oak Lodge of Masons at Effingham, N. H., on the day he became twenty-one years of age. He was made a Knight Templar in the Washington Encampment; took the Scottish Rite degrees of Masonry to the 32d at Nashua, N. H., being a member of the Edward A. Raymond Consistory. He was one of the charter members of Temple Chapter, Royal Arch Masons, and became a member of Palestine Commandery of Knights Templar upon its establishment at Rochester.

He was a member of the Kennedy Lodge, I. O. O. F., at Rochester, and a member of the Order of Elks at Dover. In military orders he belonged to Sampson Post, G. A. R., and was a member of the Massachusetts Commandery of the Loyal Legion.

Aside from his professional duties, he found time to devote to business enterprises. He was the principal owner and treasurer of the A. L. Hobson Co., which did a large business in the manufacture and sale of lumber. His well recognized practical mind and methodical business habits brought to him the handling of numerous trust estates. He took an active part and was one of the principal movers in the organization, reorganization and management of numerous large corporations, including banks, banking companies, water works companies, lighting companies, insurance com-

panies, and business corporations, too numerous for mention at this place.

He was clerk of the Manchester and Lawrence Railroad; he was one of the trustees of the Norway Plains Savings Bank; a director of the Rochester Aqueduct Co., Rochester Loan and Banking Co., Portsmouth T. and G. Co., Wolfboro Loan and Banking Co., Granite State Fire Insurance Co., Laconia Car Co., as reorganized.



CHARLES B. GARNEY.

As a trial lawyer and advocate Mr. Garney was a distinguished member of the bar in Southern New Hampshire. Until his last sickness began to come upon him in the early part of 1896 he was a busy man in his profession, and enjoyed a practice remunerative beyond the average attorneys of the State.

He was by temperament and disposition especially adapted to the practice of his chosen profession. No one knew human nature better than he, and he seemed to understand it without study. He read a man's character and disposition almost by intuition. He was the quickest man to grasp the facts in a case I ever saw. With a few questions he got at the vital points. Endowed with a clear, practical mind

and with quick perception, broadened by experience, the salient points seemed to come within the horizon of his vision before others could see them.

Having gathered the facts he was as fertile in his expedients by way of remedy. With an inventive mind trained by a long experience with men and affairs, full of resources, he seemed at once to be able to suggest the way out of a difficult situation. His quick comprehension of both the facts and the remedy seemed to be alike intuitive.

His independence and integrity won for him the confidence and patronage of business people. He attained especial distinction in his profession from his association with large interests, and it was in this that his wisdom as a counselor, his sound judgment and his fidelity to his friends gave him a prestige among the leading men of the State. His especial strength in these larger affairs lay in his great tact and executive ability. The confidence of his associates and clients in these qualifications led all parties interested to seek and to give heed to his suggestions.

Punctuality was a cardinal rule with him. What he had to do he wanted done right, and wanted to know that it was completed. Full of courage and hope he brought enthusiasm and zeal into every cause he undertook, and was thoroughly devoted to his clients' interest.

Endowed with a commanding presence, he was a forcible speaker; truly eloquent in a cause which enlisted his sympathies, but relentless in his arraignment of his victim when he seemed wrong or oppression. He had a way of saying things that convinced one that what he said he meant, and that what he professed he believed and felt. At all times he was a strong man, with an earnestness that carried conviction—vigorous in his language, sometimes homely but always pertinent in his illustrations, with occasionally a story earnestly or amusingly told to fit the case.

In his politics he was Republican, and he was chosen unanimously by his associates as a delegate to the last National Convention.

He had a sympathetic heart and was well known as a public spirited citizen. He was always generous towards individuals and charitable objects that needed his aid. If he was satisfied an eleemosynary object was worthy, his giving was spontaneous, and he didn't need to be solicited.

He manifested great regard for the people not only of the towns of his nativity and early residence, Ossipee and Wakefield, but for Carroll county as a whole. He did many acts of charity in his lifetime, and left the residue of his estate for the benefit of the people of his native county.

No one had a better friend than Charles B. Gafney, and his friendship was invaluable to one whom he liked. He was very strong in his likes and dislikes. He was especially kind and considerate to the younger members of the legal profession. He seemed to welcome an opportunity to administer good, wholesome advice, and his earnest, good wishes seemed to be pervaded with a feeling of genuine good will. Professional envy and jealousy found no lodgment in his heart.

Briefly summing up his characteristics, he was a man of good native intellect and strong common sense, endowed with an excellent memory and ready wit that always hit the mark; with honesty and industry as controlling principles of his conduct and fidelity to friends; a man impatient of delay, zealous in all his undertakings, detesting affectation or sham, having a heart overflowing with generosity and strong human kindness,—such a man as is justly honored in life and lamented in death.

HARRY GENE SARGENT, Concord, city solicitor since 1887, is the son of Samuel Merrill Sargent and Cyrene Mitchell and a lineal descendant of William Sargent, barrister-at-law in London, England. William Sargent was born in 1602, became a midshipman in the British navy, and in 1614 sailed

with Captain John Smith to Jamestown in Virginia. From there he came to Massachusetts, his name appearing in the colony records as early as 1633. From him descended a long line of Sargents, many of whom have figured conspicuously in the civil, military, and professional history of New England.

Harry G. Sargent was born in Pittsfield, N. H., September 30, 1859, but while a boy moved with his parents to Hooksett and afterwards to Concord, where he received his public school education. Graduating from the Concord High School in 1878, he at once began the study of law in that city in the office of W. T. & H. F. Norris, and in 1878-80 took a course of lectures at the Boston University Law School. On returning to Concord he resumed his studies in the office of John Y. Mudge, and remained with him until his admission to the bar in August, 1881. Since then he has been actively and successfully engaged in the practice of his profession in Concord. At first, and for several years, he practiced alone. In July, 1893, he formed a co-partnership with Henry F. Hollis, and in 1896 Edward C. Niles was admitted to the firm under the name of Sargent, Hollis & Niles. Mr. Hollis withdrew December 1, 1898, and the firm was changed to its present style of Sargent & Niles, Thomas H. Madigan, jr., being connected with said firm.

Mr. Sargent's legal career has been a brilliant one. He soon gained a high standing at the Merrimack county bar, both as a counselor and advocate. From January, 1885, to January, 1887, he was county solicitor, and since then he has held the office of city solicitor of Concord, discharging its duties to the entire satisfaction of the community, and winning for himself a wide reputation for ability and skill. In brief, he is one of the ablest lawyers in New Hampshire, and is well known outside of the State. He has had an extensive practice before legislative committees as well as in the State and United States courts, being associated with General Wayne Mac Veach as counsel for Austin Corbin, of New York, be-

fore a committee of the Legislature, making a powerful argument in the New Hampshire House of Representatives in opposition to the Mount Washington bill in 1891, and being counsel for Coe & Pingree in suits brought in the State and United States Circuit Courts which involved the title to the summit of Mount Washington. He also argued in the Supreme Court the matter relating to the State's inter-



HARRY G. SARGENT.

est in the Concord Railroad. These are a few of the important cases with which Mr. Sargent has been connected; many others might be mentioned as equally important, and illustrative of the consummate skill and ability which have conspired to make him one of the recognized leaders of the bar of his section. He is a member of the bars of the United States Circuit Court and of the United States Circuit Court of Appeals, and has argued several important cases before both of these tribunals.

Outside of his profession Mr. Sargent is and has been very influential. He is a trustee of the Pillsbury General Hospital of Concord, president of the Concord Snow-shoe Club, a trustee of the Protestant Episcopal church of New Hampshire, a member of the Passaconaway Club of Concord, and a leading factor in

several other charitable and social organizations. He is one of the most public spirited of citizens, energetic, progressive, and patriotic, and in every capacity is highly respected and esteemed. He is also a member of Ramford Lodge, I. O. O. F., of the Wondanet Club of Concord, and of the Southern New Hampshire Bar Association.

Mr. Sargent was married on the 14th of December, 1881, to Elizabeth Dudley, daughter of Hubbard T. and Antoinette (Gordon) Dudley, of Concord, N. H. They have one daughter, Margaret Dudley Sargent.

WILLIAM F. NASON, member of the bar and ex-mayor of the city of Dover, New Hampshire, was born on November 22, 1857, in Sanford, York county, Maine, and is a



WILLIAM F. NASON.

son of Joseph T. Nason, and Susan E. (Frost) Nason. After the usual period of attendance at the public schools, Mr. Nason finished his education at South Berwick and Keenebank, Me., and began the study of law in his native State, finishing with Hon. Buel C. Carter, of Wolfboro, N. H. He was admitted to the

Maine bar in 1879, and in the same year was accepted as a partner with Mr. Carter; the latter retired from the firm in 1885.

Mr. Nason was naturally endowed for the profession of the law, and during the twenty years since he began practice, has steadily advanced toward the front rank. His active and intelligent interest in public affairs, and the confidence reposed in him by the people, led to his early election to positions of trust. He was elected city solicitor of Dover in 1883 and served with marked ability seven years. In 1886 he was elected to the New Hampshire Legislature, and served on the committee on judiciary and the committee on elections. In 1892 he was elected county solicitor, and re-elected in 1894 and 1896. In these legal positions Mr. Nason was zealous and fearless in the service of the community and earned the commendation of the public.

Mr. Nason's public spirit and unselfish efforts for the prosperity of his adopted city have been recently fully recognized in his election to the office of mayor of the city in 1895 and his re-election in 1896, while still less than forty years of age.

WILLIS GEORGE BUXTON, Penacook (town of Roseau), is the son of Daniel M. and Abbie A. (Whitaker) Buxton, and was born in Henniker, N. H., August 22, 1856. He was educated at the Clinton Grove and New London Academies in his native State, and read law with Brooks K. Webber, of Hillsborough Bridge, and at the Boston University Law School, from which he was graduated with the degree of LL.B. in June, 1879, being admitted to the New Hampshire bar at Concord in March of the same year. He began the practice of his profession at Hillsborough Bridge as a partner of Samuel W. Holman, but in the fall of 1882 removed to Penacook in the town of Roseau, in Merrimack county, where he has since been located, and where he was associated with Hon. Ne-

hemish Butler until the latter's death in August, 1883. Since then he has practiced alone. Mr. Buxton has built up a large and successful business. In a number of important cases he has displayed great ability, a broad and accurate knowledge of the law, and high legal qualifications, which have won for him a recognized leadership.



WILLIS G. BUXTON.

Mr. Buxton is a leading Republican, and for several years has served on the Republican State committee. In the town of Roseau he has been very active and influential, participating in many important movements for local public improvements, and serving as town treasurer and as a member of the School Board. He still holds the former office, serving his eleventh term. He represented his town in the lower house of the New Hampshire Legislature in 1895, and as chairman of the committee on elections and member of the committee on the revision of the statutes rendered valuable service and added to a reputation already well established. In 1897 he was a member of the State Senate from the ninth district, and served with distinction as chairman of the judiciary committee. He was also a prominent member of the State Constitutional

Convention of 1889, and is now (1899) secretary of the New Hampshire Orphans' Home, located at Franklin, a member of the Odd Fellows, a member and past master of Horace Chase Lodge, F. & A. M., of Pennecook, and a member of Mount Hersh Commandery, K. T., of Concord. He is an attendant at the Congregational church, and a public spirited, enterprising citizen.

Mr. Buxton was married June 4, 1884, to Miss Martha J. Flanders, daughter of Winthrop B. and Harriet (Loving) Flanders, of Pennecook. They have had one daughter, Grace Harriet, who died December 22, 1897.

JAMES A. EDGERLY, son of James and Nancy H. (Wedgwood) Edgerly, was born in Wolfborough, N. H., on the 15th day of May, 1846: was educated at the public schools



JAMES A. EDGERLY.

and at the Wolfborough and Tuftonborough Academy; lived upon his father's farm in Wolfborough until twenty years of age, then removed to Great Falls, now Somersworth, N. H., where he now resides. After teaching school for several years, he studied law in the

office of William J. Copeland, and was admitted to the Strafford county bar in 1874, and at once became a partner of Mr. Copeland, under the firm name of Copeland & Edgerly, which partnership continued until the death of Mr. Copeland, August 1, 1886.

Mr. Edgerly was a member of the New Hampshire Legislature in 1883, and again in 1885. Was a candidate for speaker in 1885, but withdrew before the caucus in favor of Hon. Edgar Aldrich, who was subsequently nominated and elected. He was also State senator in 1895-96 and chairman of the judiciary committee during his term. Since that time he has devoted himself exclusively to his profession. He has been attorney for the Boston and Maine Railroad since 1882, and has a large practice in this State and Western Maine. As a criminal lawyer he has had an extensive practice, having been engaged in the defense of fifteen murder cases, some of them being among the most celebrated trials in this part of the country. His law library is said to be the largest private library in the State, and he also has a large collection of rare historical works. He was married to Annie A. Wood, November 19, 1874. She died, June 24, 1898. He was married to Alice M. Abbott, January 3, 1900. He has no children.

JOHN L. SPRING, one of the prominent members of the Grafton, N. H., bar, was born at Newport, N. H., January 14, 1830. He is a son of John C. and Lorena A. (Jaquith) Spring, grandson of Josiah C. and Betsey (Clark) Spring, and great-grandson of Converse and Mary Spring, Converse Spring having been a native of Watertown, Mass., who in 1780 moved to Peterboro, N. H., purchasing a farm. He resided there until his death April 13, 1812.

John L. Spring laid the foundation of his education in the public schools and having determined to follow the profession of law, he entered the office of Hon. C. W. Woodman and

Hon. Thomas J. Wentworth, both of Dover, N. H. He was admitted to the bar in 1860, and after practicing a year in Wilton, moved to Milford, where he remained in active practice nine years. In 1870 he settled permanently in Lebanon, N. H., where for the past thirty years and more he has been a leading member of his profession, a public spirited citizen and identified with the growth and pros-



JOHN L. SPRING.

perity of his adopted town. He has always shown a zealous interest in public and political affairs and has been active in the councils of the Republican party, receiving in return many evidences of the confidence of the people through appointment and election to positions of responsibility. He was a member of the Constitutional Convention of 1876, was elected to the House of Representatives in 1891 and re-elected in 1893 and 1895, serving during each of these sessions as a member of the Committee on Judiciary. In the various debates of these terms he took an active and influential part, aiding in the passage of many important measures, and watching with jealous care the rights of the people.

Mr. Spring is an honored member of both the Masonic and Odd Fellows orders, being a

Royal Arch Mason and serving four years as grand representative in the Sovereign Grand Lodge of Odd Fellows of the United States. In 1875 he was honored by Dartmouth College with the degree of Master of Arts.

Mr. Spring is distinguished for his natural force of character, broad general information, and sound judgment on the important issues of the day. His counsel has during many years been frequently sought outside of his profession, where large public and private interests were at stake. As a lawyer he stands among the foremost in the State.

On March 1, 1856, Mr. Spring married Ellen M., daughter of William Fountain and Elizabeth, his wife, of Moriah, N. Y.; Mrs. Spring died November 9, 1899.

Mr. Spring has four children: Arthur Langdon Spring, a successful lawyer in Boston; Clarence Walter Spring, a prosperous physician in Fitchburg, Mass.; John Rolland Spring, a student in Boston University Law School; all are graduates of Dartmouth College and unmarried; Carrie S. Clark, wife of Charles S. Clark, of Washington, D. C.; they have one daughter, Marriam S. Clark.

REUBEN EUGENE WALKER, Concord, son of Abiel and Mary (Powers) Walker, was born in Lowell, Mass., February 15, 1851. He received his preparatory education in the public schools of Warner, N. H., where the family has lived for more than one hundred years, and at Colby Academy in New London, and was graduated from Brown University in 1875. While a student at the latter institution he exhibited marked intellectual ability and stood high in his class, which included such men as Winslow Upton, professor of astronomy at Brown; Benjamin Ide Wheeler, president of the University of California; Hon. David Baker, of Kingston, R. I.; and Hon. Albert D. Bosson, of Chelsea, Mass.

Mr. Walker's tastes and inclinations were for the law, and upon completing his collegi-

ate studies he entered the office of Sargent & Chase, one of the leading law firms in Concord, N. H., composed of Hon. J. Everett Sargent, late chief justice of the New Hampshire Supreme Court, and Hon. William M. Chase, now an associate justice of that bench. Mr. Walker remained with them till his admission to the bar in August, 1878, when he began active practice in Concord, where he has since



REUBEN E. WALKER.

acquired an extensive clientage. He was a partner of Robert A. Ray under the firm name of Ray & Walker for six years, or until about 1884, and after that he practiced alone till April, 1891, when he formed a partnership with Frank S. Streeter, as Streeter & Walker. This firm was soon changed to Streeter, Walker & Chase, and was in turn succeeded in January, 1896, by the present firm of Streeter, Walker & Hollis.

As a lawyer and advocate Mr. Walker has achieved prominence at the bar, and among both the older and younger members of the profession is recognized as an able and talented man. Possessed of accurate knowledge of the law, of great industry, and of sound judgment, he has the capacity for executing an immense amount of hard work. He is a power before

a court and jury, a safe adviser, and a clear, concise, and logical speaker. His legal learning covers a wide range of jurisprudence. Chief Justice Doe died March 9, 1896, and after his death Mr. Walker prepared and wrote the opinions in his unfinished cases, having performed similar work for other Supreme Court judges who had retired from the bench or had been incapacitated. The opinions thus prepared were in every instance examined and approved by one or more of the surviving justices. He is also one of the authors of "Ray & Walker's New Hampshire Citations," a work of note and importance. These and various other productions of his pen show marked literary ability as well as broad legal learning and judicial acumen, and have added to a reputation which already graced the bar of the State.

Mr. Walker has also taken a prominent part in public life, and though modest and unassuming has filled several important positions with great credit. He was county solicitor of Merrimack county in 1889 and 1890, and in 1895 represented the Sixth ward of Concord in the New Hampshire Legislature. In politics he is an ardent Republican.

He was married on the 18th of June, 1895, to Mary Elizabeth Brown, daughter of Lowell Brown, of Concord, N. H., and they have one daughter, Bertha May.

GILMAN MARSTON, Exeter, N. H., lawyer, soldier, statesman, was born August 20, 1811, and died at Exeter, July 3, 1890.

At the obsequies of General Marston were many men of eminence from a distance, anxious to honor the memory of their friend and contemporary. Of his career as a lawyer it is eminently fitting to here place upon a permanent record the tribute paid to him on that occasion by Hon. Charles H. Bell, with slight abridgment:

Born and educated in a distant part of the State, and prepared for his profession else-

where, he came to Exeter in 1841 without relatives or friends here to help him in business, and with but a single acquaintance. He had little capital beyond a vigorous constitution, a good education and a determination to succeed. The legal business of the county was generally in the hands of lawyers of character and ability, well established and possessing the confidence of the community. It was no



GILMAN MARSTON.

easy task for a beginner, and a stranger, to work his way upward in competition with such men as James Bell, Amos Tuck and John S. Wells, of Exeter, Ichabod Bartlett, Levi Woodbury and James W. Emery, of Portsmouth, and Daniel M. Christie, of Dover. But he had undaunted courage and confidence, and set heartily to work. And so great were his industry, energy and zeal, that ere long he satisfied the court, the bar and the public that he was entitled to a place among the foremost. Each year as it went by then brought him new accessions of business and of reputation; and the last score of years of his life he was without a rival in southeastern New Hampshire, and without a superior in the entire State.

What were the qualities which enabled him to gain his conspicuous position? Was he gift-

ed with abnormal mental endowments—an instinctive comprehension of legal principles—a fountain of spontaneous convincing eloquence? Far from it. He possessed talents, but they were solid rather than brilliant. An intellect not phenomenal, though acute, analytical and logical, a strong will, an ambition that never slept, a courage that never quailed, a power and disposition for work that never tired—these were the chief characteristics that insured his professional success. What he accomplished came not from intuition but by effort; not like the fluids which burst forth from the earth all fitted in nature's alchemy to illuminate the world, but rather like the products of scientific invention, the results of patient study and care and experiment.

The experimental stage of his practice having been surmounted, and his title to a place among the ablest counselors and triers of causes in the county demonstrated, he neglected no means to equip himself thoroughly for his work. Well grounded in the elementary principles of the law, he added to his library as he was able the new treatises and reported decisions of value, and diligently studied and assimilated their contents. This practice he kept up for several years of his life, but he never degenerated into what is called a mere book-lawyer. Each question that presented itself in his business, involving points not already familiar, he investigated until he made himself master of every phase of it. His memory was exact and tenacious, and all that he acquired he stored up in a shape available for use.

The amount of information outside of his own profession which he accumulated in his long and varied practice must have been prodigious. For instance he was engaged in numerous actions in which questions of medical or surgical knowledge or skill were involved—questions frequently of such nicety that the ablest experts were called in to testify for both parties. He never felt that he had fully performed his duty to his employer in any case till he had learned from books and every other means of instruction all that they could impart

relative to the subject matter involved therein. And the like was true in all the multitude of causes in which he was counsel, including questions in various sciences and arts and trades, in different kinds of business, railroads, insurance, patent, and others, and in one instance at least embracing some nice distinctions in theology.

Success, which too often leads to indifference and the habit of neglect, had no effect to make him relax his exertions. He was fully as diligent in his efforts to *keep* his prestige as he had been to gain it. Nor did the interruption of his professional life, by absences in Congress or in the army, render him any the less a painstaking and thorough lawyer. He brought back to his clients the same sedulous attention, the same enthusiasm and zeal to protect and defend their interests that characterized him in the early days of his practice. And it was not until the weight of years had begun to tell upon him, and to exact the rest which his busy life had earned and his lessening strength demanded, that he indulged himself in some respite from his labors.

The crucial test of his skill and ability was when his work was brought before the final tribunals for adjudication. Then and there the soundness of his judgment, the accuracy of his law, the sufficiency of his evidence, the adequacy of his knowledge were put to the proof. No slighted work would answer. Each joint and seam was to be scanned and tested under the eye of a wary and skillful opponent, and every weak spot and imperfection detected and laid bare. It is enough to say that seldom, if ever, was it his fortune to suffer from the ordeal. Few of our best lawyers committed fewer mistakes than he. When his causes came on for hearing, he was strong in the consciousness that nothing had been neglected that a prudent foresight could suggest. Any apprehensions that might have beset his mind beforehand were banished then. His native combativeness rose to the occasion, and he was thrilled with a stern *gauldium certaminis* that brought added light to his eye and decis-

ion to his lip. There was thenceforth for him no such words as fail. Every nerve was upon the stretch; he had eyes and ears only for his cause. But amid all his excitement he never lost his presence of mind. Each fraction of law and testimony and explanation that went to strengthen and complete his case was put together with the accuracy of the component parts of a dissected map; and all the while the movements of his opponent were watched with lynx-eyed vigilance, that he should nowhere overstep by so much as a hair's breadth the limits of strict legality.

As in his preparations he left nothing to chance, so in his arguments he trusted nothing to the inspiration of the occasion. Like every practical and discriminating speaker, he wandered off into no wilderness of uncertainty, but formed the plan of his speech deliberately and adhered to it faithfully. He attempted no rhetorical display; his analytical and logical faculties gave character to all his productions. His language was plain Saxon; his sentences were clear cut and incisive. His argument was like a demonstration of a proposition in Euclid: admit his premises, and his conclusion was as inevitable as a decree of fate. His occasional appeals to the feelings were rarely in the direction of sympathy, but he was strong in his ridicule of an absurd proposition or in his denunciation of an ignominious act. And as for false witnesses and dishonest parties, better for them that they were punished with a whip of scorpions, than come under the lash of his caustic tongue.

As a counselor he was eminently safe and judicious. He had little disposition to speculate on what improvements he would introduce into our jurisprudence. Rather like Lord Kenyon he believed it was the province of wisdom by diligence to search out what had been adjudicated and to keep the feet in the ancient ways. He was conservative by nature and by conviction.

In addition to being faithful and constant and true to the interests of his clients, another quality which entitled him to their confidence

was his sterling honesty in all matters pecuniary.

There have been few of his profession in New Hampshire who have attained success greater than his, and few who deserved it more. The title of Doctor of Laws, which he received from his alma mater, was a merited recognition of his professional eminence. No lawyer within my knowledge has more completely realized the ideal of Lord Brougham in his famous description of the duties of a legal counselor, than he.

General Marston's career as a soldier was scarcely less distinguished than as a statesman; his patriotism was rugged and vigorous and moved him to prompt action when the government found itself face to face with rebellion. When the first colonel of the Second New Hampshire Regiment of Infantry resigned his command in May, 1861, before the regiment had left its headquarters, General Marston was appointed on June 4 by the governor to fill the vacancy and was mustered into the service on the 19th of that month. He had already tendered his services to the governor, though holding the office of congressman. In a little more than a month from his appointment he led his regiment to the disastrous field of Bull Run, where many of its members were wounded and some killed. Its colonel himself was severely wounded and carried from the field. With his wound dressed and his arm in a sling, he heroically returned to the field, where he received an ovation from his troops. That was the beginning of a long career of honorable service for his country. He commanded his regiment at Fair Oaks, in the long seven days' battles before Richmond, at bloody Malvern Hill, and Fredericksburg. In all these memorable engagements he was always the brave officer, cool of brain and prompt to act.

General Marston was appointed a brigadier-general November 29, 1862, but did not accept the office until the 17th of April following, when he was assigned to command a brigade of New Hampshire troops which had earned a

respite from field duty and was detailed to guard prisoners at Point Lookout, Md. While faithful to his trust there, the duty was wholly distasteful to him, and through the instrumentality of Gen. Benjamin F. Butler, he was soon given command of a brigade in the field. General Butler said of him:

"He came with me up the James May 5, 1864, and commanded a brigade when we surrounded Richmond at the south to await Grant driving Lee before him from the north. We remained until Sheridan's arrival with the Army of the Potomac. We drove the enemy within his outer line, and Marston took that line and held it with a vigor, tenacity and audacity never equalled by any soldier in the war."

His action at Drury's Bluff, Cold Harbor and Petersburg, was that of a courageous, capable soldier. He resigned his commission as brigadier-general on April 20, 1865.

During nearly half a century General Marston was before the people as a candidate for some public station to which they wished to see him elected. After filling the various town offices, he was elected to the State Legislature, where he at once took a prominent position. As before stated he left his seat in Congress to take up arms for his country. In 1889 Governor Sawyer selected him to sit in the United States Senate until the election of Senator William E. Chandler to a second term. In all of his long career as a State legislator, a soldier, a member of the National House of Representatives, and a senator, Gilman Marston was true to himself and to every obligation.

In concluding this necessarily imperfect sketch of General Marston the following from the closing paragraph of remarks by Hon. John D. Lyman at the funeral must suffice:

"Conversant as I have been with the public affairs of several towns, I have never known any other instance, where a citizen for so many years exerted so controlling an influence as did General Marston here. Since 1845 he has been most of the time before his fellow-citizens as a candidate for some position, and the vot-

ers of the town have never permitted him to be defeated. However good, able and popular his competitors the voters through all these many years sustained Marston. Yet he was never known to even ask a man to vote for him, so far as I can learn. I need not assure you that no man was ever truer to Exeter than General Marston, and no town ever truer to a man, than Exeter to General Marston."

HARRY BINGHAM, a native of Concord, Vt., son of Hon. Warner Bingham and Lucy (Wheeler) Bingham, born March 30, 1821, is a descendant in the eighth generation from Thomas Bingham, master cutter at Sheffield, England, in 1614. Thomas Bingham of the third generation, settled at Norwich, Conn., and died at Windham in 1693. Warner Bing-



HARRY BINGHAM.

ham, who was born in Cornish in 1789, was State senator in 1842-43, and assistant-judge of Essex county, Vt., in 1844. He died in Bethlechem February 12, 1872. His son, Harry Bingham, is a graduate of Dartmouth College, class of 1843, under the presidency of Nathaniel Lord, and has been engaged in the profession

of law at Littleton, N. H., since the year 1846. During all of this period he has been actively identified with the Democratic organization of that State and a distinguished exponent of the principles of the party.

From 1846 to the war period Mr. Bingham held no public office and was not a candidate before the people. He was elected to the New Hampshire House of Representatives for Littleton in 1861 and re-elected in 1862, 1863, 1864, 1865, 1868, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1881, 1889, 1891, and was a candidate for speaker in 1862. He was a State senator for the Grafton district two terms, 1883 to 1887. He was a member of the Constitutional Convention of 1876. He was always a member of the committee on the judiciary, in the terms of his legislative service, and in 1871 and 1874, the years of Democratic supremacy, he was chairman. In 1867 he was United States treasury agent under President Johnson. In 1865 he was the Democratic candidate for Congress against James W. Patterson, and in 1867 against James Benton. He was the Democratic candidate for United States senator, in the New Hampshire Legislature, against Aaron H. Craig in 1870; against Bainbridge Wadleigh in 1872; against Henry W. Blair in 1879; against Austin F. Pike in 1883; against Henry W. Blair in 1885; and against William E. Chandler both in 1887 and 1889.

He was named by Gov. James A. Weston for chief justice in 1874, but his confirmation was defeated by a Democratic division, the Republican councillor giving the casting vote against the nomination. In 1880 he was tendered an appointment as a justice of the Supreme Court by Governor Head, but declined. In 1866 he was a delegate to the Philadelphia Peace Convention. In 1868 he attended the National Convention in New York, which nominated Horatio Seymour, on which occasion he acted as proxy for Hon. Josiah Minor, of Concord, member of the National Committee, and he was himself at this time chosen the member of that committee for this State, serv-

ing in that capacity until 1872. This year he was a delegate to the Baltimore Convention, which nominated Horace Greeley. In 1880 he was a delegate to the Cincinnati Convention, which nominated General Hancock, though he was in favor, personally, of the re-nomination of Samuel J. Tilden. In 1884 and 1892 he was a delegate to the Chicago Conventions which nominated President Cleveland, and in 1896 was on the electoral ticket of sound money Democracy whose candidates were Palmer and Buckner.

In all of these conventions he was on the committee on resolutions. In 1864 and 1888 he was on the electoral tickets of his party in this State, and was re-nominated by the National Democracy whose candidates were Palmer and Buckner.

These have been years in which he has been conspicuous in bearing the burdens of laborious duty for his party with comparatively none of the compensating emoluments of official station. He opened the campaign in 1870, 1872, and 1896, as president of the State conventions, with able and authoritative statements of principle and policy, and in twenty sessions of the New Hampshire Legislature he was the exponent of party doctrine and intellectual leader of the Democracy. He was always thoroughly equipped for the severest tests in forensic and parliamentary effort, and neither his courage nor his honesty was ever impugned.

Mr. Bingham's law practice has always been extremely large. His briefs argued in the law terms of the Superior Court are contained in every volume of the New Hampshire Reports from the 20th to the 50th volume. For twenty years he was leading counsel in the prolonged and famous litigation between the great railroad systems of the State and which did not end until their consolidation a few years since.

He is the author of numerous addresses and essays among which the most important are perhaps those with the following titles: "Centennial Address;" "Certain Conditions and Tendencies that Imperil the Integrity and Independence of the Judiciary;" "The Monu-

ments of Constitutional Liberty;" "Progress in Asiatic Civilization and its Significance for the Western World;" "The Rights and Responsibilities of the United States in Reference to the International Relations of the Great Powers of Europe and the Lesser Republics of America;" "The Relations of Woman to the Progressive Civilization of the Age;" "The Annexation of Hawaii a Right and Duty;" "The Influence of Religion on Human Progress."

Mr. Bingham stands to-day at the summit of an honorable life, viewing the momentous issues of the present with a judgment unbiased by personal interest or personal ambition.

THOMAS COGSWELL, Gilmanton Iron Works, N. H., the youngest son of Thomas and Polly Noyes Cogswell, was born at Gilmanton February 8, 1841. His father removed from Atkinson, N. H., to Gilmanton in 1820, when he was twenty-one years of age, he having been born December 7, 1798. He settled on the farm formerly occupied by his grandfather, Hon. Joseph Badger. He was a man of strong character and large intellectual endowments and became a leader in the community. He served in the Board of Selectmen, was ten years a deputy sheriff, county treasurer three years, and was elected to the State Legislature. In 1841 he was appointed a judge of the Court of Common Pleas for the new county of Belknap and held the office until 1855. In 1856 he served as a member of the Governor's Council, and he held the office of justice of the peace more than forty years. After a long and useful life he died August 8, 1898.

Thomas Cogswell obtained his non-professional education in Gilmanton Academy and entered Dartmouth College from which he graduated in the class of 1863. When the war of the Rebellion began his active patriotism was fired and he enlisted in 1862 in Co. A, Fifteenth New Hampshire Volunteers, and

was at once appointed first lieutenant, soon afterward receiving promotion to captain. During his term of service he was in the Department of the Gulf under General Banks and was with his regiment at the siege of Port Hudson. At the expiration of his term of service in 1863 he returned to Gilmanton and began the study of law in the office of Stevens & Vaughan, at Laconia, supplementing this



THOMAS COGSWELL.

period of study with the regular course in Harvard Law School. He was admitted to practice in the Supreme Court of New Hampshire in September, 1866, and opened an office at Gilmanton Iron Works in December of the same year, where he has continued ever since.

Mr. Cogswell is a Democrat by birth and personal inclination. He moreover dwells in a community that is very largely Republican, a political condition that does not usually enable a man of the opposite political faith to achieve prominence in public affairs or to secure election to public office. Nevertheless in this instance, through his personal popularity, the dominating magnetism of his manner, and the faith of the voters in his sound judgment and integrity, he has been elected to nearly every office in the gift of his townsmen. In

1868 he was superintending school committee, and in 1871-2, and again in 1899 was a member of the State Legislature and served on the judiciary committee. During the years 1880, 1881 and 1882 he was one of the Selectmen of the town, and during two of these years he was chairman of the board. In 1878 he was elected to the State Senate. In these several offices Mr. Cogswell never failed to win commendation from his fellow citizens. Through the exercise of his never-failing good sense and practical knowledge of affairs he was always able to act for the best on important matters. In 1884 he was candidate for councillor, and in 1886 was the Democratic candidate for governor, and came very near to an election. In 1893 he was appointed a member of the New Hampshire Railroad Commission, and served to July 1, 1894, when he was appointed, by President Cleveland, United States pension agent for New Hampshire and Vermont, which he held until July 1, 1898.

Mr. Cogswell has always taken an active part in local educational affairs and served many years on the board of trustees of the Gilmanton Academy. He is at the present time president and treasurer of the board, and the institution receives the watchful care and unselfish labor that has always characterized his attitude towards the cause of education.

Mr. Cogswell is a member of the Masonic order, belonging to Winnepissaukee Lodge; he is also a member of Post 37 of the G. A. R., and of Crystal Lake Grange, Patrons of Husbandry, and Massachusetts Commandery of the Loyal Legion.

Mr. Cogswell was married in 1873 to Florence, daughter of R. D. Mooers, of Manchester, N. H., who died February 14, 1892. They have three children.

ERASTUS PERRY JEWELL, the son of Mark F. and Dorothy M. (Holds) Jewell, was born in Sandwich, N. H., March 16, 1837. His great-grandfather, Mark Jewell, came from

England and settled in Durham, N. H., about 1743. His grandfather, Bradbury Jewell, moved to Tainworth, N. H., about 1770. At the first town meeting, July 2, 1777, he was chosen selectmen and for some years exercised a controlling interest in public affairs. In 1785 he returned to Durham where he lived until 1802 when he moved to Sandwich where he resided until his death in 1828. Bradbury



ERASTUS P. JEWELL.

Jewell was an old time magistrate, a captain of the militia and a very active and useful man. His son, Mark F. Jewell, was a farmer, and an upright and highly respected citizen; he died in 1861. He had two sons who arrived at maturity; Jefferson H. Jewell and the subject of this sketch.

Erastus P. Jewell passed his early years upon the farm and attending school. At a very early age he developed an extraordinary love of books. He was an intense student and while fitting for college at New Hampton Institute his health failed to such an extent that his college course had to be abandoned, and for more than a year books were closed to him and his fondest hopes seemed to have been blasted forever. After a long period of rest, having been in a measure restored, he entered

the law office of Col. Thomas J. Whipple, of Laconia. Upon his admission to the bar in March, 1865, he formed a partnership with his instructor which continued for nearly five years.

Col. Whipple was a brilliant man of great ability, and the firm of Whipple & Jewell became very widely and favorably known. Mr. Jewell looks back upon his long acquaintance with Colonel Whipple with real pleasure fully appreciating that whatever success may have come to him is largely due to his association with this noted attorney.

The firms of Jewell & Smith, Jewell & Stone, and Jewell, Owen & Martin have each occupied a prominent place in the bar of New Hampshire. His firm is now Jewell, Owen & Veazey. Mr. Jewell has always been an extensive and tireless reader of rare books outside of the law and in many fields seldom explored by members of the legal profession.

He was married in 1861 to Ann M. Hodgkins, of Tamworth, N. H. They have no children.

WILLIAM W. BAILEY, attorney of Nashua, New Hampshire, was born in Hopkinton, in that State, November 11, 1829. He was a son of Thomas and Jemima Smith Bailey, and descended from John Bailey, who came over from England in 1640 and settled in Rowley, Mass. His great-grandfather was Humphrey Bailey, and the family were living in Hopkinton in 1771.

Mr. Bailey was given excellent educational advantages and was prepared for college in the district schools, in Pembroke Academy and in the New Hampshire Conference Seminary, at Northfield. He entered Dartmouth College in 1850 and graduated in 1854. To fit himself for the profession of law he studied for a time in the office of George & Foster, in Concord, N. H., and finished with a course in the Albany Law School, from which he graduated in 1856 with the usual degree of LL.B. He

at once opened an office in Nashua and during a period of forty-six years was one of the prominent members of the bar of that part of the State, and also was actively interested in many large undertakings outside of his profession. He represented his ward in the State Legislature in 1863 and 1864, and was nominated by his party in 1867 for State senator, for presidential elector at large in 1884,



WILLIAM W. BAILEY.

and for member of congress in 1888. For these latter offices he suffered defeat with the remainder of the ticket.

The great confidence reposed in Mr. Bailey by his fellow citizens led to his selection for many positions where integrity, sound business judgment and executive ability of a high order were essential. He was a director and president of the Wilton Railroad; a director of the Nashua and Lawrence Railroad from 1871, and treasurer since 1891; president of the Nashua Savings Bank from 1879 to 1895, and president of the Hillsboro Mills. These various institutions and corporations were in every instance promoted in their usefulness and prosperity by the influence exerted by Mr. Bailey.

Mr. Bailey always took a deep and act-

ive interest in all educational affairs and institutions and held several positions of responsibility in that connection. He served the State as trustee of the New Hampshire College of Agriculture and Mechanic Arts from 1871 to 1876, and the city of Nashua several years as a member of the Board of Education. He was twenty-one years trustee of the Public Library, and some years trustee of the State Library. He was president two years, 1895-96, of the Sons of the American Revolution. In the afternoon of his active life Mr. Bailey enjoyed to the utmost the respect and friendship of the community. He died June 9, 1899.

In 1858 Mr. Bailey married Mary B., daughter of Alfred and Mary Webster Greeley. He was father of one son and one daughter.

ALFRED TRASK BATCHELDER, was born in Sumner, N. H., February 26, 1841, son of Nathaniel and Sarah Trask Batchelder. He received his early education in the district schools of his native town and at the academy in New London, N. H., and fitted for college at the seminary at Tilton, N. H. He was graduated at Dartmouth College in 1871, and studied law in the office of Judge W. H. H. Allen and Hon. Ira Colby, in Claremont, N. H. Both of his instructors were eminent in their profession, and under their guidance he laid the foundation for the pursuit of a profession in which he has become successful and distinguished. He was admitted to the Sullivan county bar in September, 1873, and at once began practice in Claremont, associated with Mr. Colby, whose pupil he had been. He remained with Mr. Colby until 1877, supplementing his earlier education in the law by the preparation for trial of many of the important cases in which his partner was engaged.

In 1877 he removed to Keene, N. H., and became a partner with Francis Augustus Faulkner, and his son, Francis C. Faulkner, under the firm name of Faulknors & Batchel-

der. His connection with Mr. F. A. Faulkner not only attested the high position which he had already attained at the bar, but furnished also the best opportunities for his further advancement. Mr. Faulkner was a thoroughly educated lawyer, a graduate of Harvard, and of its law school. He had been in practice in Keene since 1849, and three years before his connection with Mr. Batchelder had declined



ALFRED T. BATCHELDER.

an appointment to the bench of the Supreme Court of New Hampshire. No man at the bar was more respected or enjoyed more fully the confidence of the community. He died May 22, 1879, and during the two years which Mr. Batchelder was associated with him the business of the firm was established on the firm basis which it has since fully retained. Since the death of Mr. Faulkner the partnership of Mr. Batchelder with his son Francis Childs Faulkner, has continued under the firm name of Batchelder & Faulkner.

Notwithstanding the extensive practice which Mr. Batchelder enjoys, he finds time to engage in enterprises and pursuits outside of his profession. His fellow-citizens have not failed to demand his services in their behalf, and in 1885 and 1886 he was mayor of Keene.

He is president of the Cheshire Provident Institution for Savings, president of the Impervious Packing Company, president of the C. B. Lancaster Shoe Company, director in the Emerson Paper Company of Sumner, and a director in the Ashcroft and Keene National Banks. In the line of his profession he succeeded Judge W. H. Allen as register of bankruptcy under the United States bankrupt law, and from 1879 till the Cheshire Railroad Company consolidated with the Fitchburg Railroad he was its general counsel. He was elected to the Legislature in 1896, and re-elected in 1898, and served during both terms as chairman of the judiciary committee.

WALTER W. SCOTT, Dover, N. H., was born in Dover, August 26, 1867, and is a son of John and Jessie Bird Scott. He received his education in the public schools of his native place and at Phillips Exeter



WALTER W. SCOTT.

Academy. Choosing the law as his profession he entered the office of Hon. John Kivel, and after a period of study there, took a course in the Boston University Law School. He was admitted to the bar in March, 1897. Mr. Scott

is a Republican and had been only a short time in practice before he was called into public office. He was elected city solicitor in January, 1898, and county solicitor in November of the same year, still holding that office. He was elected to the State Legislature in 1892, where he served on the committee on judiciary, and was chairman of the committee on elections.

Mr. Scott is one of the most successful and popular of the younger members of the New Hampshire bar. Loyal to his friends, zealous in the interests of his party and active in the promotion of any undertaking that promises to benefit his native town, he has gained a large circle of business and political friends.

He has taken a deep interest in local military affairs, joined the New Hampshire National Guard and rose through all the various grades to that of colonel, receiving his commission in January, 1895. He is a member of Mees Paul Lodge of Free Masons, and of Olive Branch Lodge of Knights of Pythias, of which he is past chancellor.

In 1897 Mr. Scott married Helen, daughter of the late Charles A. C. and Louise J. (Davis) Thompson.

SAMUEL W. EMERY, attorney and police justice of Portsmouth, New Hampshire, was born in that city March 30, 1863. He is a son of Samuel H. and Mary E. (Sins) Emery. He studied law in the office of Hon. James W. Emery, passed his examination before he was twenty-one years old, and was admitted to the bar in April, 1884. Since that date he has been in active and successful practice in Portsmouth.

Mr. Emery's recognized ability as a lawyer, his industry and integrity, and his faithfulness to his clients, have brought him a large business and given him a high standing in the community. He has served as city solicitor from August, 1885, to August, 1889, and from August, 1890, to August, 1891. From July,

1887, to July, 1891, he served in the office of county solicitor. In December, 1894, he was appointed Police Court judge, and still retains the office.



SAMUEL W. EMERY.

Mr. Emery married in 1893, Mary E. B., daughter of John A. and Mary E. (Cole) Smith. They have one daughter.

NATHANIEL EVERETT MARTIN, Concord, son of Theophilus B. and Sarah L. (Rowell) Martin, was born in London, Merrimack county, N. H., August 9, 1855. On his father's side he is of Scotch-Irish descent, his first paternal ancestors coming to this country from Londonderry, Ireland, to Londonderry, N. H., in 1724, in the persons of William Martin and his son, William, jr. James Martin, of the third generation, son of William Martin, jr., was a soldier in the Continental army during the Revolutionary war, and settled on Buck street in the town of Pembroke, N. H. Gov. Noah Martin was one of his descendants. Nathaniel Martin, son of James, located in London, N. H., in 1808, and was for a time deputy sheriff of old Rocking-

ham county. His son, Theophilus B. Martin, father of the subject of this article, was extensively engaged in the settlement of estates and in such other legal business as was usually done by a county justice. The Rowell family, from which Mrs. Sarah L. (Rowell) Martin descended, is of English extraction, and first settled in Haverhill, Mass.

Mr. Martin was educated in the common schools of London and Concord, N. H., whither the family moved in 1870. He completed his studies at the Concord High School, graduating in 1876, and in September of that year entered the law office of Sargent & Chase, where he spent three years. He was admitted to the New Hampshire bar August 14, 1879, and since then he has continued in the active practice of his profession in Concord, steadily gain-



NATHANIEL E. MARTIN.

ing a large and lucrative business, and achieving a high reputation for ability, sagacity, and industry. At the fall election in 1886 he was chosen county solicitor of Merrimack county, and served in that capacity with considerable distinction from July 1, 1887, to July 1, 1889.

In politics Mr. Martin has affiliated with the Democratic party. He is a popular, public spirited citizen, a man of great energy and





enterprise, and for several years has been a leading factor in the political and professional affairs of his city and State, and at the fall election of 1898 he was elected mayor of Concord, a Republican stronghold, and now (1899) holds that office. In his official capacity as solicitor and mayor he has enforced all laws impartially and to the general satisfaction of the best class of the community. As a lawyer he has always had a large practice at the bar, and for a number of years has been engaged extensively in the trial of causes before the court and juries. At present he is associated with Dewitt C. Howe under the firm name of Martin & Howe.

Mr. Martin has been treasurer of the Concord Building and Loan Association since its organization in September, 1887, and also treasurer and a director of the Sullivan County Railroad for a number of years. He has settled many important estates, has been a persevering and industrious lawyer from the first, and owns one of the finest private law libraries in New Hampshire. Mr. Martin is a member and past noble grand of Rumford Lodge No. 46, I. O. O. F., of Concord, and has been an officer in the Grand Lodge of the State. He is unmarried.

CHARLES DOE was the youngest child of Joseph and Mary Bodwell (Ricker) Doe. He was born at Derry, N. H., April 11, 1830. Early in his childhood the family returned to their former residence in Somersworth (now Rollinsford), N. H., and took up their abode in the old homestead of the Ricker family. His mother was of a substantial New England family, the daughter of one of the leading citizens in that community. His father was a man of remarkable natural ability. Like his son, he had all his resources at command.

Charles Doe attended the academies at South Berwick, Me., Exeter, N. H., and Andover, Mass. He spent one term at Harvard, and then entered Dartmouth College, where he

graduated in 1849. He not only failed to study the prescribed text-books, but he did not even own some of them.

From the moment of his graduation, however, he began a life of hard work. He soon entered the office of Daniel M. Christie, of Dover, N. H., and applied himself diligently to the study of law. Like most eminent lawyers in active practice, the head of the office had very little time in which to direct the studies of his clerks; but they got a great deal from him indirectly. He was a man saturated with legal learning; and a large amount of valuable matter gradually oozed out from him, and exercised a fertilizing influence upon the young men around him. Then, as now, it was a usual mistake of law students to do too much reading and too little thinking. Into this error Judge Doe did not fall. Before his admission to the bar he read fewer text-books than most students. He read not more than three, or, at the outside, four text-books, in addition to Kent's Commentaries. But these books he made his own. Meantime he gave careful attention to the business passing through the office, learning how to look up authorities, and how to handle reported decisions. At the close of office pupillage he further pursued his studies at the Harvard Law School.

In January, 1854, he commenced practice at Dover, where he continued until his appointment to the bench, having the late Charles W. Woolman as his partner for much of the time. At the very outset of his career he received the appointment of county solicitor, which was not conferred without some hesitation on the part of the governor, due to the youth and inexperience of the candidate. This appointment, which he held for two and a half years, operated as an immediate introduction to court work; and he came at once to the front, becoming *per saltum* one of the prominent members of the Strafford bar. The first time he appeared in court was when he opened the case of State v. Hodge, a prosecution for murder in the first degree. Besides the criminal business of the State, he had a fair share

of civil business, trying cases with success against such opponents as Daniel M. Christie and John P. Hale. Probably his most important civil litigation was that locally known as "The Kingman Case," where he was at first the junior of Ira Perley, and subsequently (after Judge Perley's appointment to the bench) of John S. Wells. Few civil controversies have ever excited greater public interest in



CHARLES DOE.

Stafford county; but as the trial on the merits took place before a board of referees whose decision was final, it does not figure in the reports except as to some questions arising in the preliminary stages of the litigation. (See 31 N. H., 171 and 182.) The practice of the young lawyer was not confined to the Trial Terms. He argued cases orally at the Law Term, and was listened to there with marked attention.

In certain respects he departed entirely from the prevalent mode of trying jury cases. The wide license in cross-examination formerly allowed to Mason and his compeers, to enable them to break down a class of professional witnesses, was an evil still in force; and so was the practice of interchanging asperities between counsel. He treated the witnesses on

the other side with civility; and refrained from "spats" with the opposing counsel. The limits which he, as a judge, afterwards laid down for counsel, were the same which he himself had carefully observed when at the bar. His rejection of the old method was strongly marked in the first trial in which he took part, the capital case already mentioned. The senior counsel for the defense was a man who had gained distinction in what may be called the blackguarding method of trying cases. Better men had essayed to fight him with his own weapons, but had failed for the very reason that they were better men. It did not seem to have occurred to the bar that there was any way of meeting him except by descending to his level and attempting to pay him back in his own coin. This man began the Hodge trial in his accustomed way, intending, no doubt, to stir up and confuse the young junior counsel for the State. To the intense surprise of the spectators, the new solicitor ignored the existence of the senior counsel for the defense. He did not seem to hear any of his irrelevant remarks, but went on putting questions and addressing the court just as if those remarks had never been made. The consequence was that, ere the end of the long trial, the counsel for the defense had "flattened out" as never before.

Charles Doe, though loving the law for its own sake, was not wholly absorbed in the practice of his profession. He entered earnestly into politics. His father was one of the old war-horses of the Democracy, and the son naturally attached himself to the same party. He was assistant clerk of the State Senate in 1853 and 1854; and was active as a stump speaker in the exciting campaigns which followed the repeal of the Missouri Compromise.

All this time, however, he was looking forward to a legal future, rather than to political distinction. Stump speaking was taken up to overcome the extreme bashfulness of his early years. But, when once embarked in active political work, he displayed there, as everywhere else, "the intense energy of his nature";

and was generally reckoned a strong "party man." Great then was the surprise when, early in 1859, he took the stump for the Republicans.

Judge Doe's change of political affiliation placed serious obstacles in the way of his success upon the bench, to which he was soon after appointed. The political thermometer was then up to fever heat. Notwithstanding the fact that in the years from 1845 to 1861 an enormous number of good citizens changed their political allegiance, yet a large portion of those who remained within the party organization were inclined to doubt the motives of all who quitted it.

September 23, 1859, Charles Doe was appointed an associate justice of the Supreme Judicial Court. Undoubtedly, some influential men favored his promotion on political grounds, but his legal qualifications were beyond dispute, and the two foremost lawyers of his section, Daniel M. Christie and Gilman Marston, both strongly recommended the appointment.

Judge Doe's official tenure was almost unique. Appointed at twenty-nine, he remained on the bench, with the exception of the two years from 1871 to 1876, until his death, at the age of sixty-five, thus passing more than half his life in the discharge of judicial duties. That no man could have enjoyed so lengthy a term unless his services had been, in the long run, acceptable, goes without saying. But at the beginning of his judicial career he met with violent opposition in certain sections of the State. At the start there was a very strong political prejudice against him. This obstacle, if it had been the only one, he would soon have overcome by his immediate manifestation of ability and impartiality. But there were other causes of offense which alienated from him some lawyers who would naturally have been his closest friends. He was, from the very beginning, a reformer. He insisted on having cases tried civilly, expeditiously, and upon the merits. Some bar leaders were unwilling to change the habits of

a lifetime at the bidding of a younger man. The result in certain counties was a somewhat stormy season, which would have induced the majority of new judges either to submit to the old regime or resign their office in despair. Not so with Judge Doe. He stood his ground and carried his main points. In his mode of dealing with refractory counsel, as in most other things, he was original.

Take, for instance, a scene in which one of the first lawyers of the State figured. When Judge Doe took his seat upon the bench he resolved that no counsel should ever, in his presence, be permitted to insult a witness, a resolution prompted by the recollection of the treatment to which he himself had been subjected when a witness at a time prior to his admission to the bar. In the very first year of his service a prominent lawyer, a man of character, but accustomed to the old style of practice, began to cross-examine a witness in an objectionable manner. "Mr. —," said the judge, "I do not suppose you intend anything offensive to the witness, but your manner might be construed by others as indicating such intention, and I suggest that you modify it." Mr. — at once flared up, and replied that he should examine the witness in his own way. To his intense astonishment, the judge, instead of committing him *far* contempt, a move for which he was probably prepared and which might have gained him some popular sympathy, turned to the witness and said, "Mr. Witness, you need not answer any more of Mr. —'s questions, unless you choose, and if you do choose to answer, you may do it in your way." Mr. — did not care to persist and take his chance of being roundly cursed by the witness. He immediately abandoned the case and left the court room, swearing audibly as he went. The learned counsel afterwards resumed his former friendly relations with the judge.

Judge Doe early resolved never to commit counsel for personal disrespect to himself. But unruly members of the bar soon learned that there were other effective methods of keeping

them in check. When a prominent lawyer, while engaged in a trial, made an impertinent remark to the court, he was quietly told that, unless he retracted that remark, his client would have to get other counsel. Whereupon the learned gentleman undertook to explain that he had not intended to use the English language in its ordinary meaning.

In one or two counties combinations were attempted to break up terms which Judge Doe was to hold, and these efforts were not entirely without success. In one county, a term which would naturally would have lasted three weeks was ended in three days. In another county, it was whispered with bated breath, that the leader of the bar would decline to try cases when Judge Doe was presiding, a resolution which was not adhered to. But it was ultimately found impracticable to solidify the bar against the judge. It gradually dawned even on his most persistent opponents, that the jury were inclined to sympathize with the court, and that hence a lawyer who made himself offensive to the bench was likely to lose the verdict.

The quality which, more than all things else, triumphantly carried Judge Doe through these early difficulties, was his astonishing readiness. He had all his faculties at instant command. He not only possessed unusual legal knowledge, but he had also the power of applying this knowledge to facts, and with lightning-like rapidity. He was never puzzled or confused. He was not only able speedily to arrive at a correct conclusion, but was also able instantly to explain his views in short, crisp sentences, which completely disposed of the matter in hand, and frequently caused everybody to wonder how there could ever have been any doubt about the result.

As in the case of some other eminent judges, the rapidity of his mental operations was sometimes too great for the comfort of slower men who were practicing before him. But gradually the bar and the bench came to understand each other. The lawyer realized that reasonable expedition was desirable; and the

judge discovered that the majority of men were incapable of keeping up with his fastest gait. The result was, that the lawyers went as rapidly as they could, and that the judge ceased to urge them to go faster.

In charging the jury, Judge Doe acted upon the maxim that the principal object in speaking is to make yourself understood. He once asked an associate: "Did you instruct the jury in the precise language set out in the reserved case?" "Yes," was the reply. "Well," returned Judge Doe, "it is all sound law, and would have been admirable for an essay in a law review; but the jury could not have got any idea from it." "You do not," said he, "want to use legal phraseology to the jury. In charging them, you should translate the law into farmers' and mechanics' talk." In an important case in Cheshire county, where Caleb Cushing was counsel, there was an issue as to mental capacity, in respect to which both sides requested very fine-spun instructions. After hearing their suggestions, the judge said: "I am going to tell the jury that if this man knew what he was about, the transaction will stand; and if he didn't, it won't." A look of unutterable disgust came over General Cushing's intellectual countenance, but neither party excepted. Whenever Judge Doe thought that justice required it, he did not confine himself to charging on the law, but also summed up on the facts; and if he was of opinion that one side had a weaker case than the other, he did not feel bound to conceal that opinion from the jury. A charge of his in a criminal case is probably one of the shortest ever given: "Gentlemen of the jury, I shouldn't want to convict the prisoner on this evidence, but you can do as you like."

While Judge Doe was not very firmly bound by precedent in civil cases, yet it was on the criminal side of the court that he departed furthest from the old rules of procedure. Knowing that the State cannot carry up exceptions, he sometimes struck out an entirely new path. Before the passage of the Statute of 1869, making respondents competent to testify in their

own behalf, it was very common for counsel representing the accused to complain bitterly of the fact that their clients' lips were sealed; and to assert that, if they could only have the privilege of testifying, they could satisfactorily explain all incriminating circumstances. Judge Doe had probably got very tired of hearing this sort of talk in cases where there was no reasonable doubt of guilt. One day, when a lawyer opening for the defense was making these stereotyped assertions, he was suddenly interrupted from the bench. "Mr. —, you may put your clients on the stand." "What, your Honor?" "You will be permitted to call your clients as witnesses on their own behalf." The learned counsel, gradually recovering from his astonishment, turned and whispered to his junior: "Well, John, we shall have to put the meals on, and the result will be conviction."

During the first seven years of his judicial life Judge Doe was not conspicuously prominent in Law Term work; and his appearances in the Reports were less frequent than those of most of his colleagues. (Each judge had then some discretionary power as to which of his opinions should be reported.) Judge Doe's earliest opinions appear in 39 N. H. In the eight volumes from 39 to 46, his opinions average less than eight pages per volume, and of these only two (*Underhill v. Manchester*, 43 N. H. 214, and *Fitfield v. Northern R. R.*, 42 N. H. 225) are comparable in ability to many which he subsequently wrote. His first contributions to the Reports which excited the general interest and commendation of the profession were his dissenting opinions in two cases in 47 N. H. (published in 1869): *Boardman v. Woodman*, 47 N. H. 149, and *Kendall v. Brownson*, 47 N. H. 196. After 48 N. H. he did his full share in filling up the volumes.

Any one who examines his work will discover that he had two very opposite methods of writing opinions: some of his opinions being among the most concise in the books, hardly containing more words than the head-note (indeed, in one instance, containing fewer

words); while others are among the longest to be found in the Reports. The inquiry suggests itself: Why should a man, who had shown himself capable of writing such admirable short opinions, so often write extremely long ones? One reason is that he was in the minority in some of these cases, and was naturally anxious to fully justify his dissent. See, for instance, besides the two cases in 47 N. H., already referred to, *State v. Pike*, 49 N. H. 408, *Hale v. Everett*, 53 N. H. 133, and *Orr v. Quimby*, 54 N. H. 603. There are also other cases where there was originally a division in the court, although that fact is not stated in the Reports. Thus in *Aldrich v. Wright*, 53 N. H. 398, popularly known as "The Mink case," a majority of his colleagues had in his absence decided the case the other way (*i. e.*, "other" from the result finally reached), and had announced their decision. The opinion of Judge Doe, which now appears in the book as the opinion of the whole court, was originally written to convince his brethren of their error, and had the desired effect. Again in *Lisbon v. Lyon*, 49 N. H. 553, though no dissent is expressed, yet the court were not in fact unanimous upon the last point, so elaborately discussed in the opinion, pp. 582-605.

But there is another reason for the unusual fullness of some of Judge Doe's opinions. He foresaw, and answered in advance, objections not yet raised. A further reason also for the length of some opinions may be found in the writer's unwillingness to adopt implicitly the statements and reasoning of other men. Even when he substantially concurred in results, he frequently preferred a new method of statement and a new process of reasoning. It was not enough for him that his predecessors had rejected erroneous conclusions. He insisted that the "negation of error" should not be based upon erroneous grounds. See, for example, an elaborate discussion covering thirty-three pages in *Orr v. Quimby*, 54 N. H. 605-638. "The obscurity of over-elaboration" is a phrase that has been applied to one or more of Judge Doe's opinions. But that criticism is

well founded in only a few instances. Undoubtedly, ideas are sometimes repeated, but the repetition is clothed in another form of words; the purpose being to reach different classes of readers through different forms of expression. And in those cases of repetition there will generally be found at the close a single forcible sentence summing up the whole discussion.

No complete estimate can be formed of the value of a judge's work except by those who know the part he played in the private deliberations of the court. Here, as elsewhere, Judge Doe was conspicuously useful, not only in bringing about right decisions, but in preventing wrong ones. He seldom failed to discover instantly the vital point of each case, and could always give strong reasons for his conclusions. One of his associates, who went upon the bench with a pretty strong prejudice against him, afterwards said that he had never seen any other man who could hew his way out of a difficulty so expeditiously and so neatly.

It was not the least of Judge Doe's merits in the consultation room that he had not that excessive pride of opinion which handicaps so many men. Before the Statute of 1874 the judges were accustomed to sit at the Law Term in cases where their own Trial Term decisions came up for revision. Some rulings made by Judge Doe upon a certain trial in Coos county were subsequently overruled at the Law Term. The opinion was read by Judge Nesmith, who commented with unusual severity on the mistakes made at the trial. The counsel, whose exceptions were thus triumphantly sustained, hurried up to the bench and borrowed the manuscript of Judge Nesmith to gloat over it at his leisure. What was his astonishment at finding that every word of the opinion was in the well-known handwriting of Judge Doe! A difference with a colleague on a question of law was not regarded by Judge Doe as affording matter of personal grievance. With his radical tendencies, he was not infrequently found differing from Chief Justice Bellows,

who was an admirable specimen of the conservative lawyer of the old school. Yet the younger man regarded his older colleague with an almost filial affection. Judge Doe usually bore it with equanimity when he found himself in a present minority. He generally had faith to believe that his views would ultimately prevail, and this faith was not infrequently justified by subsequent results. Some of his most heretical dissenting opinions were finally pronounced orthodox. Perhaps the strongest instance, under all the circumstances, is the view which he expressed in his solitary dissent in *Boardman v. Woodman*, and again in *State v. Pike*, as to the admissibility of the opinions of non-expert witnesses upon a question of sanity. This view, after being thrice rejected by a court of which he was himself a member, was finally adopted as law by a court from the membership of which he had been carefully excluded, *i. e.*, by the court which existed from 1874 to 1876. (See *Hardy v. Merrill*, 56 N. H. 227.)

The branch of law which, more than any other, he assisted in renovating and improving was the department of procedure. In most jurisdictions, reform in this respect has been left to the Legislature; and their attempts have too largely resulted in substituting one set of technicalities for another, and in giving occasion for volume upon volume of Practice Reports. (See 53 Albany Law Journal, pp. 151, 152.) But the New Hampshire court, in Judge Doe's day, did not feel constrained to sit with folded hands, waiting for the Legislature to enact a poorly-drawn code. Instead of this, the judges proceeded to simplify practice by their own decisions; not merely by discouraging formal objections, but by boldly declaring that "parties are entitled to the most just and convenient procedure that can be invented," and by distinctly recognizing "the judicial duty of allowing a convenient procedure as a necessary instrument of the administration of the law of rights." (See the very able opinions in *Metzall v. Gilmore*, 59 N. H., pp. 431 to 435, and *Owen v. Weston*, 63 N. H.,

pp. 600 to 605.) The result is a flexibility of remedies in New Hampshire not surpassed by any of the so-called "Code States"; and, further, the absolute certainty that cases will be decided on their merits and that justice will not be "strangled in the net of form." Judge Doe's mode of life and all his habits were democratic and simple in the extreme; and his love of simplicity led him, when presiding alone at *nisi prius*, to go far towards abolishing the mere forms and ceremonies which are usually observed in the court room. But there was no omission of any incident of procedure which was really essential to the rights of suitors.

When Judge Doe had been on the bench nearly fifteen years, a political overturn took place in New Hampshire, followed by the customary "remodeling" of the judiciary. Judge Doe made no complaint of the customary decapitation. On the contrary, he enjoyed the vacation thus afforded him. Upon his marriage, in 1865, to Edith Haven, daughter of George Wallis Haven, esq., of Portsmouth, he had settled at the old family homestead in Rollinsford. He now spent two years of rest from court work at his pleasant home, giving much thought to the best methods of educating his children, spending a good deal of time among his trees, and incidentally making use of this leisure to bring up some arrears of reporting. Various attempts were made during the interval to engage his services as counsel and as referee; but they were all unsuccessful. He also declined to accede to the substantially unanimous desire of his political friends that he would accept a congressional nomination.

When the State "turned over again," in 1876, and a new court was established, the appointment of chief justice was tendered to Judge Doe without the slightest hesitation on the part of the executive. But the offer was not accepted until after very great hesitation on the part of the recipient, who was reluctant to quit his pleasant home life and who, recalling former days, could not readily understand that the bar desired him in that position.

About two years after his return to the bench an arrangement was made with his colleagues, whereby he was excused from the bulk of the Trial Term work in consideration of his giving extra time and attention to the Law Term business. The result has been that, though the chief justice was constantly engaged in his judicial labors, he was not so much before the public as heretofore, and hence many of the younger members of the bar have had but little personal knowledge of him.

One feature of his service as chief justice should be especially mentioned; and that is, the attempt to improve the style of reporting; an attempt which has borne good fruit, though resulting at times in delays which are much to be regretted. As is well known, the statement of facts and the head-notes in the New Hampshire Reports have usually been prepared in each case by the judge delivering the opinion. (See Reporter's note, 49 N. H., pp. vii, viii.) This work in the earlier volumes was generally well done. But in 1850 (Laws, chap. 961, section 5) the Legislature put a premium on judicial prolixity, by enacting that each judge, in addition to his regular salary, should also be paid for all matter furnished to the reports at a certain rate per each printed page. The more voluminous the report, the larger the compensation. This absurd provision was repealed in 1855 (Laws, chap. 1659, sections 33 and 34); but, meantime, the practice of lengthy reporting, though not adopted by all judges, had become common. Judge Doe began very early to shorten the voluminous statements of the reserved cases in making up his own contributions to the reports. And when he became the head of the court in 1876 he brought about a concert of action among the judges with a view to the preparation of concise statements and accurate head-notes, as well as a careful revision of opinions and an elimination of dicta.

For nearly twenty years Judge Doe was the official head of the legal profession in New Hampshire. But he really occupied a much

higher position. By the general consensus of his contemporaries he was the foremost man of the profession in the State; foremost, not merely in name or in official position, but in fact.

Judge Doe's intellectual superiority is to be ascribed to the fact that he united in himself qualities of the highest order, which are so diverse that they are seldom found combined in one person. He had a remarkable memory, a quality which sometimes exists "in disproportion to other mental faculties." On the contrary, he had also a remarkable power of clear thinking. Again, he had extraordinary quickness of perception and facility of expression, qualities which are apt to be relied upon by their possessor to the exclusion of patient investigation. Yet Judge Doe, despite the astonishing rapidity of his mental operations, fully realized that in many instances nothing avails except industrious research; and there was no end to the amount of drudgery he would go through.

Intellectually he was, above all things else, original. Novelty had, undoubtedly, some charm for him, especially as to reaching conclusions. His one controlling desire in every case was to do exact justice, and if this end could not be accomplished save by setting at naught the so-called "wisdom of our ancestors," he did not hesitate to go to that extremity.

Judge Doe was not what would be called a "general reader." He was not in the habit of reading unless he had a special object. Whenever he was investigating a subject, he was indefatigable in research, and examined everything that could have an important bearing. Nor were his studies on such occasions confined to law books. For instance, when preparing his dissenting opinion in *Hale v. Everett*, 53 N. H. 133, he spent weeks, and probably months, in reading history and theology. But he never read for the mere sake of reading; nor did he make use of light literature as a mental rest or recreation. In his whole life he read only one novel, and not more than three books outside of his special studies.

Socially Judge Doe was one of the most delightful of men. He did not reserve himself for great occasions, but always abounded in good sayings. Few persons have ever spent an hour in his company without carrying away something to remember him by. He was not an overpowering talker, who did not know how to listen. Nor was he one of those who carefully prepare their bright remarks. On the contrary, the best things ever heard from him were off-hand comments on, or replies to, remarks made by others. It should be added that, unlike some humorists, he could appreciate a joke of which he was himself the subject. Judge Doe's strong sense of humor, though usually restrained on the bench, crops out in the opinion in *De Lancey v. Ins. Co.*, 52 N. H., pp. 587 to 591. A few years ago, when the arguments and influence of the insurance companies seemed certain to defeat a bill pending in the Massachusetts Legislature, a member rose, with the "Fifty-second New Hampshire" in his hand, and said that he should like to read to his colleagues the opinion expressed by the Supreme Court of New Hampshire relative to insurance companies. Before the reading had progressed far, the House was convulsed with laughter, and there was no further effective opposition to the passage of the bill.

But there was one thing which Judge Doe's friends prized far more than his intellectual ability or his conversational power, and that was his kindness of heart. Not to speak here of charities in his neighborhood, or of his sympathy and helpfulness in sickness, special mention should be made in this connection of his helpfulness to the members of his own profession. He was the best of friends to law students, to young practitioners, and to older lawyers who were on the point of assuming the unfamiliar duties of judicial position. His advice was always to the point, and given solely with a view to the good of the recipient.

He had great charity for the failings of others. He could "put himself in the other man's place," and realize the obstacles in his path,

To a sarcastic remark made to him about the conduct of a man of generally high character, who seemed to be in one instance unduly influenced by personal friendship, his reply was simply: "Lord, lead us not into temptation!"

Although Judge Doe's death took the bar by surprise, yet his health had been very precarious at several periods during his judicial career; but his great mental powers remained unimpaired to the last moment of his life. He died suddenly, March 9, 1896, at the railroad station in Rollinsford, while on his way to the adjourned Law Term at Concord.

Twenty-three years earlier his predecessor, Chief Justice Bellows, passed away suddenly at precisely the same period in the judicial year. What Judge Doe then said in regard to his friend may now, with a slight change, be applied to his own legal career: The lesson of his life is that of devotion to work.¹

JOSEPH HILLARD WORCESTER, Rochester, N. H., is one of the leading members of the bar of Strafford county, of which he has been an active member for thirty-five years. His parents were Isaac and Julia (Hilliard) Worcester, who were among the pioneers of the section in which they settled. Isaac Worcester descended from William Worcester, who immigrated and settled in Boston in 1636. The former was a prominent man in Strafford county, N. H., for many years, where he was closely connected with the Abolition party, was firm and outspoken in his views against slavery, and was the personal friend and counselor of many of the noted leaders of the anti-slavery movement at a time when it required strong moral stamina and some personal risk to defend his convictions.

Joseph H. Worcester was born on December 31, 1830, at Milton, N. H., and received his

education in the public schools and at Brown University. He pursued his study of the law in the office of Cyrus K. Sanborn, of Rochester, and was admitted to the bar in 1864. Immediately after his admission he began the practice of his profession in Rochester. His practice has been of a general character, and has established for him the reputation of an honest, painstaking and able counselor. He



JOSEPH H. WORCESTER.

has always taken an active interest in such measures as have been inaugurated for the development and advancement of his city and county, and in every way has proved himself a worthy member of his profession and a citizen of unquestioned intelligence and purity.

JOHN KIVEL, was born in the city of Dover, N. H., on the 29th of April, 1855. He was given good opportunities for acquiring an education, and graduated from the Dover High School in the class of 1871, fitting for college under a local tutor. He graduated from Dartmouth College in the class of 1876, and in pursuance of his life purpose began the study of law in the office of Frank Hobbs of Dover in

¹ This sketch is abbreviated from the very interesting Memoirs of Chief Justice Doe, read before the Southern New Hampshire Bar Association, by Professor Jeremiah Smith of Harvard Law School, formerly Associate Justice of the Supreme Court of New Hampshire.

the same year of his graduation. He was admitted to the bar in August, 1879. During the past twenty years, he has enjoyed an excellent measure of professional success. He has always taken an active interest in public and political affairs, and was elected solicitor for Strafford county in November, 1886. It is sufficient commentary upon the satisfac-



JOHN KIVEL.

tion which he gave in this office to state that he was re-elected in 1888 and again in 1890. Mr. Kivel is still a young man, but his future success and higher honors seem assured.

OLIVER ERNESTO BRANCH, ex-United States district attorney for New Hampshire, was born in Madison, Lake county, Ohio, July 19, 1847, son of William Witter and Lucy J. (Bartram) Branch. William Witter Branch was born in Aurelius, N. Y., August 1, 1804, was a lawyer, and one of the judges of the Court of Common Pleas in Lake county, Ohio. He was one of the leading citizens of northern Ohio, and through his efforts the charter for the Cleveland, Painesville & Ash-

tabula Railroad was obtained, which afterwards developed into the great Lake Shore system. He was the son of Deacon William Branch, of Preston, Conn., born September 3, 1760, who was a soldier of the Revolution, serving in Washington's command from April, 1777, to the close of the war. He was in the battles of Moomouth, Germantown, Fort Mifflin and Yorktown. He was one of Major Andre's guard during his trial, and helped to take his body down from the gallows. He was married November 27, 1796, to Lucretia, daughter of Asa and Elizabeth (Tracy) Branch, and descendant of Samuel and Esther (Richmond) Tracy, Jonathan Tracy, Thomas Tracy of Tewksbury, Eng., and Peter Branch of High Halden, Eng. Asa was the son of Samuel Branch of Preston, Conn., born there August 6, 1729, and died in 1772. Samuel married, March 17, 1752, Hannah, daughter of Joseph and Elizabeth (Gore) Witter, granddaughter of Ebenezer and Dorothy (Morgan) Witter, and descendant of Josiah and Elizabeth (Wheeler) Witter, and William Witter of Lynn, Mass. Samuel was the son of Samuel Branch of Preston, Conn., born there September 3, 1701, who died there August 25, 1767. The elder Samuel married, May 23, 1728, Anne, daughter of Samuel and Mercy Lamb of Stonington, Conn., and granddaughter of John Lamb of Groton, Conn. He was the son of Peter Branch of Preston, Conn., born at Marshfield, Mass., in 1659, who moved to Norwich, Conn., in 1680, was one of the founders of Preston, Conn., in 1683, and died in Preston, December 27, 1713. Peter married Hannah, daughter of Thomas and Mary (Austin) Lincoln, and granddaughter of Thomas Lincoln, "The Miller," of Taunton, Mass. He was the son of John Branch of High Halden, Eng., who came to America in 1638, at the age of ten years, with his father, Peter Branch, and settled at Scituate, Mass. John married Nancy Speed of Scituate, December 6, 1652. Peter Branch of High Halden, Eng., a carpenter, father of John Branch, sailed for America in the ship "Castle," in 1638, and died on

shipboard. He was married January 14, 1823, to Elizabeth Tillame.

Lacey J. Bartram, mother of Oliver E. Branch, was the daughter of Uriah and Rebecca (Williams) Bartram, granddaughter of Daniel and Ann (Merchant) Bartram of Reading, and descendant of Elinor (Chauncey) Merchant, Israel Chauncey of New Haven, and Rev. Charles Chauncey, second president of Harvard College. She was born at Fairfield, Conn., May 25, 1816.

Oliver E. Branch received his early education in the public schools at Madison (Ohio) and Whitestown (N. Y.) Seminary. He entered Hamilton College in 1869 and was graduated in 1873, with the highest honors of his class. He won the rhetorical honor, and was successful "Hend Prize" orator, "Clark Prize" orator, and "McKinney Prize" debater during his senior year. After graduation he was principal of the Forestville Free Academy and Union School, at Forestville, N. Y., for two years. In 1875 he entered Columbia College Law School, graduating in May, 1877, with the degree of LL.B. He received the degree of A. M. from Hamilton in 1876 and the same honor from Dartmouth in 1896. He was admitted to the bar in New York in June, 1877, and there began the practice of law, being associated with his brother, John L. Branch, until 1883, when he moved to Weare, N. H., to engage in literary work, and was admitted to the bar of New Hampshire in the same year. He was a member of the New Hampshire Legislature in 1887 and 1889 and was a member of the judiciary committee during both sessions. He was the candidate of his party for speaker in the session of 1889. During his career in the Legislature he became widely known, and his reputation as a lawyer and orator was quickly established. His speech in the session of 1887 on the "Hazen Bill," so called, was considered the great speech of that remarkable session. Since 1889 he has been in active practice in Manchester, moving there from Weare in 1894. He has been counsel for the Boston & Maine Railroad in all their important litigation in

New Hampshire for the last ten years. He was counsel for the Manchester & Lawrence Railroad in the suit brought against the Concord Railroad, arising out of the operation of the Lawrence Railroad by the Concord from 1856 to 1887, and in which the largest judgment ever recorded in the State was obtained. He was the counsel for the Boston & Maine in the long and complicated litigation with



OLIVER E. BRANCH.

the Concord & Montreal Railroad prior to the consolidation of the two systems, and also for the Manchester & Lawrence Railroad in the suit brought by the State to recover claims aggregating nearly a million dollars. Mr. Branch has made a speciality of corporation law and has an extensive clientage. During the last ten years he has argued a larger number of cases at the law term of the Supreme Court than any other member of the bar, and is one of the busiest men in his profession. He is in the front rank of jury trial lawyers, and is equally at home in the cross-examination of witnesses and the summing up of evidence.

In 1891 Mr. Branch was earnestly recommended for appointment to the bench of the United States Circuit Court, receiving the en-

dorsement of the entire bench of New Hampshire, as well as of many of leading lawyers of the State. In a personal letter of recommendation Chief Justice Doe said, "He is a lawyer of the first class, the head of the New Hampshire bar. In the argument of law questions in the law term he is without a competitor." In 1898 he was strongly urged to accept a position on the bench of the Supreme Court of New Hampshire to succeed Chief Justice Lewis W. Clark, but declined to leave his large and profitable law practice.

He was appointed United States district attorney for the District of New Hampshire by President Cleveland, March 15, 1894, was moderator for the town of Weare from 1884 to 1892, is vice-president of the New England Association of the Hamilton College Alumni, and of the Delta Upsilon fraternity. He is also a member of the Phi Beta Kappa society, and of the Delta Upsilon of Hamilton College. He has always been a Democrat, and has been active in every campaign since the presidential election of 1868, and was permanent chairman of the Democratic State Convention in New Hampshire in 1892.

Mr. Branch is a gentleman of fine scholarly and musical tastes and literary accomplishment. As an orator he is particularly brilliant, and his command of graceful language is as remarkable as it is pleasing. His arguments and speeches always show the work of a close thinker and finished writer.

He was married at Weare, N. H., October 17, 1878, to Sarah M. Chase, only daughter of the late John W. Chase. They have four children: Oliver Winslow, born October 4, 1879; Dorothy Witter, born December 6, 1881; Frederick William, born September 18, 1886, and Randolph Wellington, born November 26, 1890.

CHARLES WILLIAM HOITT, justice of the Police Court of the city of Nashua, New Hampshire, was born in New Market,

N. H., October 26, 1847, and is a son of William K. A. Hoitt and Sarah C. Swain. When he was seven years old his parents removed to Dover, where he fitted for college in Franklin Academy, entered Dartmouth College in 1867 and was graduated in 1871. The following three years he devoted to teaching school in Nashua and Boston, preliminary to beginning the study of law. Entering the law office of



CHARLES W. HOITT.

Hon. S. M. Wheeler, in Dover, he studied there one year, when he changed to the office of Gen. A. F. Stevens, of Nashua. At the close of two years of study in that office he was admitted to the bar in September, 1877. From that time to the present he has been in active and successful practice in the city of Nashua. He received the appointment of police justice in April, 1889, and still holds the office. In the same year he was a member of the Constitutional Convention.

By persistent study and a wide range of reading, Mr. Hoitt has stored his mind with an extensive knowledge of the law, as well as a large fund of general information.

WILLIAM LAWRENCE FOSTER, M. A., Keene and Concord, associate justice of the Supreme Judicial Court, chief justice of the Circuit Court, and a justice of the Supreme Court of New Hampshire from 1869 to 1881, was the only son of John and Sophia (Willard) Foster and was born in Westminster, Vermont, June 1, 1823.¹ Edmund Foster, his grandfather, was born in Groton, Mass., in 1754. He was graduated from Yale College, studied for the ministry, and became quite a prominent preacher. He was settled over the church in Littleton, Mass., and continued to be its pastor until his death in 1825, a period of over forty years. He was at one time a member of the Massachusetts Senate. In 1783 he married Phoebe, daughter of Colonel William Lawrence, of Littleton. Through his paternal grandmother, Judge Foster traced his descent from Robert Lawrence, of Lancashire, England, who was born about 1150. Attending his sovereign, Richard Cœur de Lion, in the war of the Crusades in the Holy Land, he so distinguished himself in the siege of Acre that he was knighted Sir Robert of Ashton Hall. John Foster, father of Judge Foster, removed to Fitzwilliam, N. H., in 1825, and thence in 1834 to Keene, N. H., where he died February 7, 1854. He was a captain in the old New Hampshire militia, and was for many years high sheriff of the county of Cheshire.

Judge Foster, when a boy, attended the common schools and afterwards studied in the Keene and Walpole Academies. When about seventeen years of age he commenced the study of law in the office of Levi Chamberlain. In 1844 and 1845 he attended the Harvard Law School at Cambridge, Mass. In 1845 he was admitted to the New Hampshire bar in Keene, and for a short time was in partnership with John N. Baxter and afterward with Mr. Chamberlain. From 1845 to 1849 he was postmaster at Keene. From 1849 to 1853 he was clerk of the New Hampshire Senate. He was

a member of Governor Dinsmore's staff with the rank of colonel, and by him was appointed in 1850 State reporter, holding that office until 1856. During his term of office he edited volumes 17 to 19 and 21 to 31, inclusive, of the *New Hampshire Reports*. In April, 1853, he removed from Keene to Concord, where he entered into partnership with John H. George.



WILLIAM L. FOSTER.

Hon. Charles P. Sanborn subsequently became a member of the firm, and upon Colonel George's retirement therefrom in 1867 the partnership was continued by Messrs. Foster and Sanborn until October, 1869. Judge Foster was a member of the Legislature in 1862 and 1863. In 1863 he received from Dartmouth College the honorary degree of Master of Arts. He was appointed a judge of the New Hampshire Supreme Judicial Court October 1, 1869, and held that office until October 1, 1874, when, upon the reorganization of the courts, he was appointed chief justice of the Circuit Court, with the late Judges Stanley and Rand as his associates. October 1, 1876, he was appointed an associate justice of the Supreme Court of New Hampshire. He resigned that office July 1, 1881, and resumed the practice of law, in which he continued until his death.

¹ Adapted from an address delivered by Harry G. Sargent, of Concord, before the seventh annual meeting of the New Hampshire Bar Association held at Concord, February 20, 1898.

Judge Foster had the rare distinction of having been a distinguished, learned, and brilliant lawyer, and an eloquent and accomplished advocate as well as an honorable, impartial and able judge. It was my privilege to have been somewhat intimately associated with him during the latter part of his life. He was the most even tempered man I ever knew. He had a marvelous disposition—perfectly calm and serene on all occasions. He had about him a pleasing dignity which invited good fellowship while it repelled familiarity. He never spoke an unkind word or did an unkind thing. Nature had stamped upon him the undoubted quality of a gentleman. He was courteous to everybody and especially gracious to young members of the bar. On all occasions he delighted those who had the opportunity of listening to him. It is not extravagance or flattery to say that he graced and adorned every subject on which he expressed himself in a formal way. His address at the dedication of Blossom Hill Cemetery in Concord, that as retiring president of the Southern New Hampshire Bar Association, and that at the law term upon Chief Justice Doe fully demonstrated his ability as an orator. They may all be styled "gems." His opening argument in the Jenness will case, for clearness, terseness, and eloquence, would be difficult to surpass. Although Judge Foster had naturally a remarkable facility of expression he did not rely on this alone, but carefully and industriously prepared all his arguments before juries and the court as well as his addresses upon formal occasions. His reported cases as counsel are contained in the New Hampshire Reports, Vols. 18 to 29 inclusive, 25 to 30 inclusive, 32 and 33, 35 to 49 inclusive, 52, and 61 to 66 inclusive. Those cases number 168, and do not include his work before inferior tribunals or in the United States courts, in which he was an extensive practitioner.

As a judge he would preside at a trial fairly, rule intelligently, reserve exceptions honestly and clearly. As a law judge he was always desirous of hearing causes fully discussed by

counsel and receiving all the light they could give in the case; and, at the conclusion he investigated the questions thoroughly, and wrote an opinion in which his propositions were plainly stated and amply sustained by reason and authority; and his opinions stand as some of the classics of judicial literature. His opinions as judge are contained in Vols. 49 to 60 inclusive and 65 and 66, and number 243 and occupy 706 printed pages. He presided at sixty-one trials, covering a period of 1,249 days; attended about 150 days of law term work; presided at 396 jury trials; and heard 16 homicide cases, nine of which were for murder in the first degree, in four of which the accused were sentenced to death and three of them were hanged.

No man was more honorable than he in his dealings with his associates. His word once given, no written statement was needed. His rulings as a member of the court were always characterized by the same fairness and courtesy which he had shown at the bar. Master of a clear and easy English style, his opinions, even when declaring some plain and simple point of law, or when discussing some more abstruse problem, were listened to with pleasure by his hearers and are read with profit and satisfaction. He spared no pains to go to the bottom of any case which came into his hands. He did not ask for or seek political preferment. Indeed, practical politics were distasteful to him, and he was in every sense of the word a true lawyer. The qualities which made him a good judge made him a very satisfactory referee, and for a few years after he left the bench he probably tried more cases as referee than any other man in New Hampshire. Possessed of great common sense, his rulings upon questions of law were clear and decided, but never arbitrary, and in judging of men and weighing testimony he was equalled by few and exceeded by none. One of his most satisfactory characteristics as a referee was his disposition and desire to hear counsel upon both sides of the case argue it fully. His decisions always commanded respect. He was greatly

interested in the Southern New Hampshire Bar Association from its inception, and was its first vice-president and its president from February, 1893, to February, 1894. He died August 13, 1897.

Judge Foster was married in January, 1853, to Harriet Morton Perkins, daughter of Hon. Hamilton E. Perkins, of Hopkinton, N. H., who survived him. He also left four children: Elizabeth Bradbury, widow of Hon. Edgar H. Woodman; Mary Bartlett, wife of Lieutenant Marshall; William Hamilton Foster; and Roger Elliott Foster.

CHARLES J. HAMBLETT, United States district attorney, Nashua, N. H., was born in that city, January 21, 1862, son of



CHARLES J. HAMBLETT.

Judson A. and Mary J. (Perkins) Hamblett. When he was five years of age he removed with his family to Milford, where he attended the public school, and was graduated from the Milford High School in 1880. He then attended a private school for a year, after which he pursued his studies at Francestown Academy, a preparatory school, taking the four years'

course in two years. After being graduated from Francestown Academy in 1883, he commenced the study of law in the office of Robert M. Wallace, of Milford, and the office of Bainbridge Wadleigh in Boston, and was graduated from the Boston University of Law in 1889. He began the practice of law in Nashua on the 15th of October, 1889. In 1887 he was elected assistant clerk of the New Hampshire Senate, and was re-elected in 1889. In 1891 and 1893 he was elected clerk of that body. In 1891 he was elected city solicitor of the city of Nashua, and was re-elected to that office in 1892, 1893 and 1894. He was appointed United States district attorney by President McKinley in March, 1898, and assumed the duties of his office on March 16.

Mr. Hamblett was married on October 4, 1894, to Georgie Ellen Stevens, daughter of David and Cornelia Stevens. They have two children, Mary Stevens Hamblett and Robert Burrus Hamblett.

JOHN Y. MUGRIDGE was born at Meredith Bridge, now Laconia, N. H., April 18, 1832. He died at Concord, N. H., April 14, 1883. He fitted for college at Gilford Academy but did not take a college course. He studied law in the office of Col. Thomas J. Whipple at Meredith and later with Hon. Asa Fowler of Concord, N. H.

In 1854 he opened an office in Concord in connection with Judge Fowler, and their association continued until Mr. Fowler was appointed to the bench July 20, 1855. From this time he practiced by himself until 1856 when he formed a partnership with Hon. Josiah Minot. Later he was associated with Mason W. Tappan, but for several years prior to his death he was alone.

He was city solicitor of Concord, N. H., from 1861 to 1868; member of the Legislature from Concord in 1863, 1864 and 1875; member of the Senate in 1868 and 1869, and president of that body in the latter year. He married

Maria, daughter of the late Dr. Eaton, of Warner, in February, 1858, by whom he had two children, Mrs. Fred L. Pattee and John Mugridge, who with his widow survive him and are now living in Concord, N. H.

For the last ten years of his life Mr. Mugridge was reputed to be one of the strongest lawyers in New Hampshire and probably the foremost jury lawyer. He had, perhaps, the largest and most devoted legal clientele in the

B. Fessett, justice of the Police Court of Nashua, N. H.; Harry G. Sargent, ex-county solicitor of Merrimack county, and now city solicitor of Concord, N. H.; the late Arthur W. Silsby, judge of probate for Merrimack county; Samuel E. Holden, now in business in the West; Fred H. Gould, esq., now in business in Concord, N. H.; G. A. Mayden of the Lowell Courier, ex-speaker of the Massachusetts House of Representatives; Rev. Howard F. Hill, son of Hon. John M. Hill; the late Hon. Edgar H. Woodman, ex-mayor of Concord; Hon. Henry Robinson, now postmaster of Concord, N. H. These were among the students in his office who have succeeded in later life.

Mr. Mugridge, though honored with public office, cared nothing for political eminence. He devoted himself to his profession with an indefatigable zeal and the fidelity for the least interest of his clients that won for him the highest honors.

He was a dutiful son and loving husband, an indulgent father, a devoted friend, an able and astute lawyer, a kind hearted gentleman and an efficient and valuable citizen.



JOHN V. MUGRIDGE.

State and it seemed as if almost everybody could be counted within the circle of his extensive acquaintance. He was exceedingly polite in his salutations and always had a kind word to say to the humblest as well as the highest. In many things he was gentle and susceptible as a child. He met the varied emergencies of a trial, especially before a jury, with superior aptness and consummate ability.

Mr. Mugridge was a lover of young men and he liked to have them about him to a remarkable degree. At different times thirty-eight entered his office to study law and thirty-four of them graduated and were admitted to the bar. Of this number Luther S. Morrill, of Concord, N. H., was clerk of Merrimack County Court for a number of years; the late James

NATHANIEL GOOKIN UPHAM, LL.D., Bristol and Concord, associate justice of the New Hampshire Superior Court from 1833 to 1842, was the son of Hon. Nathaniel and Judith (Cogswell) Upham, and a grandson of Lieut.-Col. Thomas Cogswell, of Haverhill, Mass., who participated in the battle of Bunker Hill and served throughout the Revolutionary war. His ancestors on both sides were Puritans.

Judge Upham was born in Deerfield, N. H., January 8, 1801, and when one year old went with his parents to Rochester, in the same State, where he passed his early life. He attended Phillips Exeter Academy, was graduated from Dartmouth College in 1820, and then began the study of law in the office of his brother-in-law, David Barker, jr., of Rochester. On being admitted to the New Hampshire bar,

about 1823, he commenced practice in Bristol, but in 1829 moved to Concord, where he subsequently resided. In 1833, at the early age of thirty-two, he was appointed an associate justice of the Superior Court of New Hampshire, and remained on the bench for ten years, resigning in 1843 to accept the position of superintendent of the Concord railroad. A few years later he was chosen president of that corporation, and was actively connected with it until 1866.

Judge Upham was a member of the State constitutional convention of 1850, and chairman of the business committee of that body,



NATHANIEL G. UPHAM.

and in 1853 he was appointed by President Pierce as commissioner on the part of the United States to adjust numerous claims between citizens of this country and Great Britain and between those of Great Britain and the United States. He proceeded to London and with the English commissioner adjusted satisfactorily claims aggregating several million dollars, and many of them involved difficult questions of international law. In 1862 he was selected to perform a similar service as umpire in a commission for the adjustment of

claims between the United States and New Granada.

In politics Judge Upham was a Jeffersonian democrat, but in 1861 he cast his influence with the Union men of the North, and in 1865 and 1866 was a representative to the State legislature. He was also active in promoting the adoption of the latest amendments to the Federal constitution. He acquired a large practice and an honorable standing during his brief career at the bar, and on the bench displayed the highest judicial qualifications. As president of the Concord railroad for more than twenty years he developed business ability of a high order. He was a great student, a man of remarkable industry, conscientious in the performance of duty, and a forcible and versatile writer. Among his published addresses may be mentioned an eulogy on La Fayette at the request of the State legislature, an address on "Rebellion, Slavery, and Peace," before the Concord lyceum, and one on the "Progress of Civil Liberty in New Hampshire," before the New Hampshire Historical society, of which he was president. He also prepared a compilation embracing the best thoughts of ancient and modern authors, together with maxims which were the results of his own reflections, but it was never published, although it was pronounced a work of merit. He was active and useful in promoting the best interests of the city in which he resided, and as a lawyer, judge, and citizen was universally respected and esteemed. He died in Concord, N. H., on the 11th of December, 1869.

Judge Upham was married October 28, 1829, to Betsey W., daughter of Nathaniel Lord, of Kennelbunkport, Me., who died August 17, 1833, leaving a son and a daughter—the latter the wife of Joseph B. Walker, of Concord. Judge Upham's second wife was Elizabeth W. Burnham, of Pembroke, N. H., who survived him, dying in the spring of 1882. They had two children, one of whom, a son, died at the age of twenty-nine years.

GEORGE B. FRENCH was born at Tuftonborough, New Hampshire, November 27th, 1846, the son of James and Evelyn A. (Moulton) French. His paternal ancestors were among the first settlers on the eastern shore of Winnepesaukee; his maternal ancestors were pioneers of the wilderness and helped settle the town where they resided, naming it Moultonborough, which name it still bears. Mr. French began his education in the public schools of Moultonborough, to which place his parents removed when he was about five years of age; fitted for college at the New Hampshire Conference seminary and Female college, at Tilton, being a student there in 1866, 1867 and 1868. He entered Dartmouth college in the last year mentioned and was graduated in 1872. Following graduation, he was principal of the high school in Milford two years, and then read law one year in the office of Wadleigh & Wallace. Mr. French was influenced to make the law his profession through early impressions on his mind of a maternal uncle, a young man whose professional career was cut short by death. Leaving the office of Wadleigh & Wallace, Mr. French went to Boston and continued his studies in the office Nathan Morse, a former partner of A. A. Rumney, attended lectures at the Boston university, and was admitted to practice in Boston, May 24, 1876. On the first day of the following September he removed to Nashua, where he has since resided, and began the practice of his profession.

The prominence and success that Mr. French has attained in his profession warrant the statement that he ranks among the leading practitioners in the Granite State. He has a methodical mind, firmness of conviction and decision, is energetic, and nothing goes by default. In fact, he makes a careful and painstaking study — often fathoming puzzling mysteries with the ability of a detective — of every case in which he is retained, and upon entering a trial is fully prepared to parry his opponent and meet the issue; there is none of the hesitancy and half-heartedness that often

weakens a cause; he is earnest, forcible and direct, keeping the attention of court and juror directed to the problems involved on his side; in a word, no impression is given that he entertains any doubt concerning the final outcome. Mr. French has made successful issue in a large number of cases that were involved in deception, fraud and even forgery, many of which became noteworthy. His success before a jury is due to a remarkable faculty for grouping, explaining and arguing scattered and apparently conflicting testimony in a manner that, without attempt at oratory or figurative speech, is persuasive and effective. He is an interesting and instructive speaker, but owing to the professional demands upon his time appears but seldom before the public. His ability and worth as an advocate is known and appreciated throughout the State.

Mr. French gave the city several years of faithful and valuable service as a member of the board of education, and represented ward four in the constitutional convention of 1889. He was appointed by Governor Goodale one of the commissioners to revise the statutes of New Hampshire, but resigned before entering upon the work, not seeing his way clear to devote the necessary time to it. He is president of the Nashua Trust company, a member of the First Congregational society, of Ancient York lodge, A. F. and A. M., and an enthusiastic sportsman. He is the owner, with Dr. E. F. McQuesten, Dr. Bradford Allen, William H. Benson, Charles J. Hamblett and others, of a clubhouse in the wilderness of Maine, and thither, at certain seasons of the year, with one or more of the gentlemen mentioned, he goes for rest, recreation and the pleasure that comes of "roughing it."

December 24, 1874, Mr. French was united in marriage at Milford with Sarah F., daughter of D. S. and Harriet M. Barnham of that place. Four children have been born of this marriage: Ruth H., Robert A., Helen B. and George M.

SAMUEL BELL, LL. D., Francestown, Amherst, and Chester, governor of New Hampshire, United States senator, and a justice of the New Hampshire Superior Court, was the son of John and Mary Ann (Gilmore) Bell, and a grandson of John Bell, sr., who came from near Londonderry, Ireland, to Londonderry, New Hampshire, in 1720. He was of Scotch-Irish descent, and was born in Londonderry (the birthplace of his father) on the ninth of February, 1770.

Reared on his father's farm, he attended the common schools at intervals until April, 1788, when he began the study of Latin and later was a pupil of the distinguished John Hubbard at the New Ipswich, New Hampshire, academy. In the winter of 1790 he taught a school in his native town, and the next year entered the sophomore class of Dartmouth college, from which he was graduated in 1793. He then became a student in the law office of Samuel Dana, of Amherst, New Hampshire, who had been judge of probate for Hillsboro county from 1789 to 1792. He remained with Judge Dana the required term of three years, and on his admission to the bar as an attorney in 1796 began practice at Francestown, which he represented in the New Hampshire legislature in 1804, 1805, and 1806, the last two years being speaker of the house. In 1807 he declined the office of attorney-general of the State, which was offered him, and in 1807 and 1808 he was chosen to the New Hampshire senate, of which he was president both years. In the meantime, in 1806, he had removed to Amherst, New Hampshire, and about 1811 he moved thence to Chester, where he spent the remainder of his life, dying December 23, 1850.

At the time of his removal to Chester, Judge Bell's health was seriously impaired, and by the advice of friends he spent two seasons in travel on horseback in Ohio, then the "far west." Having substantially recovered he resumed practice in Chester, and in 1813 was a member of the executive council. In 1816 he was commissioned a justice of the New Hampshire Superior Court and served three years,

and in 1819 was elected governor of the State. He was three times re-elected to the governorship, and received at his last election nearly twenty-three thousand votes against a little more than one thousand cast for all the opposing candidates. At the end of his gubernatorial service in 1823 he was elected to the United States senate and at the expiration of his first term, in 1829, was re-elected, serving in all twelve years. In 1835 he retired from both political and professional pursuits.

The retention of Judge Bell for nearly thirty years in such responsible public positions, when he was neither a popularity seeker nor



SAMUEL BELL.

a political manager, is evidence that he possessed uncommon ability and the entire confidence of the community. He was a sound lawyer, a wise counsellor, and a man of great mental power, carefully cultivated and thoroughly disciplined. Though lacking fluency of speech, he was noted for his vigorous and forceful reasoning, for his attention to duty, and for his courteous, decided, and dignified bearing. Jeremiah Mason said the Superior Court would "lose its backbone" when it was proposed to make Judge Bell governor of New Hampshire, while John M. Shirley described

him as "a man of immense erudition and great business capacity, a thorough lawyer, and possessed of great moral courage." And the late Charles H. Bell stated that "his published judicial opinions in the early volumes of the State Reports bear testimony to his habits of thorough and careful research, his complete understanding of the rules and reasons of the law, and his clear, logical habits of investigation and statement." In politics he avoided artifice, display, or intrigue, but was conscientiously attentive to public business, kept close touch with the best sentiment of his constituency, and made an honorable record. In 1821 Bowdoin college conferred upon him the honorary degree of LL. D.

Judge Bell was married November 26, 1797, to Melitable Bowen Dana, daughter of Samuel Dana, of Amherst, New Hampshire, by whom he had six children, two of whom Samuel D. and James, became eminent lawyers. His second wife, whom he married July 4, 1828, was Lucy, daughter of Jonathan Smith of Amherst, and of their four children two sons, George and Louis, also entered the legal profession.

SAMUEL DANA BELL, LL. D., Chester, Exeter, Concord, and Manchester, associate justice of the New Hampshire Superior Court from 1819 to 1859 and chief justice from 1859 to 1864, was a son of Samuel Bell, a justice of that court from 1816 to 1819 and afterward governor of the State and United States senator, whose memoir appears in this work; a grandson of John Bell and Mary Ann Gilmore, of Londonderry, New Hampshire, the former a jurist of note and a farmer of considerable prominence; and a brother of James Bell, who is also noticed at length in these pages. His mother was Melitable Bowen Dana, daughter of Samuel Dana, of Amherst, New Hampshire.

Judge Bell came from one of the most distinguished families in New England and especially of New Hampshire—a family that has

been conspicuous at the bar and in the judiciary for more than one hundred and fifty years, and one that he honored as he honored the profession. He was born at Franconstown, New Hampshire, October 9, 1793, and was graduated from Harvard college in 1816, having among his classmates such men as Rev. Henry Jones Ripley, Joseph Willard, Dr. Josiah Bartlett, and others. After graduation he began to qualify himself for the profession of his father and maternal grandfather, Samuel Dana, of Amherst, in the office of George Sullivan, of Exeter, who was a graduate of Harvard in 1790, and who for twenty years was attorney general of the State. Mr. Bell was admitted to the bar as an attorney in 1819, and began practice at Meredith, New Hampshire, but a few months later established himself in Chester, where he gained a large clientele and came into public prominence. He was made solicitor of Rockingham county in 1823, and in 1825 and 1826 was elected to the New Hampshire legislature. In 1827, 1828 and 1829 he was a commissioner to revise certain of the statute of the State, and during the last two years served also as clerk of the house of representatives. In 1828 he was re-appointed solicitor of the county, but declined the office, which he had held from 1823. One of the last criminal actions that he prosecuted was against the robbers of the Exeter bank, in 1828, the president of which was Judge Jeremiah Smith, and so efficiently did he conduct this case that Judge Smith invited him to become cashier of the bank, an offer he accepted. Early in 1829 he removed to Exeter, where he lived until the autumn of 1836, discharging the duties of the position with ability and skill. But this work interfered with his law practice, and he therefore resigned in 1836 and moved to Concord, New Hampshire. In 1839 he was appointed the general attorney of the great corporation having control of the land and water-power at Manchester and removed there, and continued the general practice of his profession. There he lived during the remainder of his life.

Probably no one man did more to advance the then factory village of Manchester into a large and prosperous city than did Judge Bell. Having a deep interest in its progress and development, he gave it an impetus at a time when such foresight as his was needed, and professionally and as a citizen planted those germs which had a potent influence upon its growth. In 1840 he was appointed on a commission of three to revise the statutes of the State, his colleagues being Judge Joel Parker and Charles J. Fox. Their recommendations were adopted, in substance, in 1842, and constituted what was called the "Revised Statutes."



SAMUEL D. BELL

This was the first thorough treatment that the legislation of the State had received, and has served as a model for all subsequent revisions; and the changes which the commission introduced led Mr. Bell to prepare a manual for justices of the peace and other officers, entitled "Justice and Sheriff," which contained a great variety of forms and precedents, and which is still in universal use, having passed through several editions. Mr. Fox prepared a similar volume for town officers, the second edition of which, published after Mr. Fox's death, was revised and improved by Mr. Bell.

In 1846 Mr. Bell became the first judge of the Police Court of Manchester, which was incorporated that year, and filled that position two years, thus organizing on a correct basis the judicial department of the new and growing municipality. In 1848 he was appointed circuit judge of the Court of Common Pleas. He was made an associate justice of the Superior Court of New Hampshire in 1849, and after serving in that capacity for ten years was elevated, in 1859, to the office of chief justice, which he held until 1864, when he resigned. In 1865 he was placed at the head of another commission to revise the statutes, and performed that work with zeal and ability, the result being published under the title of the "General Statutes" in 1867. After this he retired permanently to private life, and died in Manchester on the thirty-first of July, 1868.

Judge Bell was a man of extraordinary power of mind and memory, and was a thorough student in college, at the bar, and on the bench. He mastered our system of jurisprudence, was well acquainted with the codes of other times and countries, and gained also a wise knowledge of mechanics, chemistry, and natural history. He was also deeply versed in early history, in the character of the courts of his native State, and in almost every branch of modern learning, and he communicated valuable articles to various publications, especially to the "New Hampshire Repository," volume 1, and "New Hampshire Historical Collections," volume 8. He was an early member and for four years vice-president and two years president of the New Hampshire Historical society, which he saved on one occasion by taking upon himself its pecuniary burden. He was also a member of its publishing committee through the issue of two volumes, and delivered before it two elaborate and notable addresses. He was an associate and State vice-president of New Hampshire of the New England Historic Genealogical society.

He was one of the recognized leaders of the

New Hampshire bar and acquired an extensive practice. As a citizen he was universally respected. His career on the bench is best summed up in the following words of William E. Chandler: "This clear-headed, strong-minded, noble judge was most kind and considerate to all young lawyers. He took pains to soften to them all his adverse *nisi prius* decisions, and to expound to them the law as if giving a lecture for the instruction of students. He never abated a young lawyer's suit without giving him a better writ. As State reporter I had much intercourse with the chief justice, and I wish to place on record not only my own admiration and love for this kind and courteous instructor, but also my opinion that he was one of the purest and ablest of the judges who have graced the New Hampshire bench."

Judge Bell was married August 8, 1826, to Mary H., daughter of Newell Healey, of Kensington, New Hampshire. They had six children, of whom three attained maturity, viz.: John James, and Samuel Newell, both lawyers, and Mary, who married John P. Newell, a lawyer, of Manchester, New Hampshire.

JAMES BELL, Gilhanton, Exeter, and Gilford (now Laconia), was the son of Samuel and Mehitable (Dana) Bell, a grandson of John and Mary Ann (Gilmore) Bell, and a great-grandson of John Bell, sr., of Scotch-Irish descent, who came from near Londonderry, Ireland, to Londonderry, New Hampshire, in 1720, and who married Elizabeth Todd. A memoir of his father appears in this work.

Mr. Bell was born in Francestown, New Hampshire, November 13, 1804, received his preparatory education at Phillips Andover academy, and was graduated from Bowdoin college in 1822. He read law with his brother, Samuel Dana Bell, of Chester, New Hampshire, and at the law school in Litchfield, Connecticut, and upon being admitted to the

bar in 1825 began active practice in Gilhanton, New Hampshire. In 1831 he removed to Exeter, where he formed a partnership with a former student, Amos Tuck. Their practice in Rockingham and Stafford counties was scarcely equalled by that of any other office, and most of it consisted of litigated cases, which Mr. Bell argued before the court and jury. He was counsel in a great majority of the causes tried in his own county for several years, being almost constantly employed in every term of the court, yet withstanding to a remarkable degree the great strain and exhausting toil which such unceasing mental



JAMES BELL.

labor demanded. In 1846 he was made the counsel and legal agent of the Winnepesaukee Land and Water Power company to conduct the preliminary and most difficult part of the business of securing the land and rights of flowage around lake Winnepesaukee for a reservoir to supply the great manufacturing establishments on the Merrimac river with water for power purposes. He then removed to Gilford (now Laconia), New Hampshire, and devoted the remainder of his life to this immense work, and died there on the twenty-sixth of May, 1857.

He had no desire for political preferment, yet he represented Exeter in the legislature in 1846, and Gilford in the State constitutional convention in 1850, and was twice a candidate for governor of New Hampshire. In June, 1855, his party having come into power, he was elected to the United States senate for a full term, and served in the thirty-fourth congress and in the extra session of 1857, but his enfeebled health prevented him from doing justice to his acquirements and abilities.

Mr. Bell was described by Chief Justice Perley as "a man of large attainments, and great versatility of powers. Considered as a lawyer, it would not be easy to name one more completely furnished for all exigencies in the different departments of the profession. He was an advocate fully equal to the conduct of the weightiest and most difficult cases. As a legal adviser, no man gave a sounder and safer opinion on a naked question of law." A good example of his ingenuity and acumen in dealing with legal problems is found in his argument of the celebrated "guide-board" cases, which were brought against several towns by Jonas B. Bowman under the Revised Statutes of 1842. Mr. Bell had an evenly balanced mind, great self-possession, a mild and gentle manner, and untiring patience, and was remarkable for the variety and amount of labor which he was able to perform. His dexterity and fine tact in handling a cause was not surpassed by any contemporary in the State. Modest and unobtrusive, a model of professional deportment, with unscathed integrity, his life was without a stain, and to the last he was universally respected and esteemed. He was in every capacity one of the most eminent and honored leaders of the New Hampshire bar.

Mr. Bell was married in 1831 to Judith A., daughter of Nathaniel and Judith (Cogswell) Upham, of Rochester, New Hampshire; a sister of Nathaniel Gookin Upham, LL.D., a justice of the New Hampshire Superior Court from 1833 to 1842; and a granddaughter of Lieutenant-Colonel Thomas Cogswell of Haverhill, Massachusetts, an officer at the battle of

Bunker Hill and throughout the Revolutionary war. Of their five children two sons became lawyers, one, Charles U. Bell, of Lawrence, being now a justice of the Massachusetts Superior Court; and a daughter who married Nathaniel Gilman White, a leading lawyer of Lawrence, Massachusetts.

SAMUEL UPTON is descended from John Upton, one of the earliest English settlers in Danvers, Massachusetts. Samuel's father's name was Daniel, and his mother's maiden name was Asenath Teel. They were united in marriage in 1832, and had a large family of children, of whom our subject was the eldest, he having been born September 12, 1834.

Samuel's parents were poor, even for those days, and he had a hard struggle to get a district school education, and harder yet was the effort to put himself through the New London and Kimball Union (Meriden), New Hampshire, academies, but he succeeded—for he made success his watchword whatever he undertook. The workshop, the farm and the position as teacher brought him the money to pursue his education, and after teaching in several New Hampshire, Vermont and Massachusetts towns he commenced the reading of law under the direction of Butterfield & Hamlin, Andover, New Hampshire, and completed his law studies in the offices of D. & D. J. Clark, Manchester. After admission to the bar in 1854, he opened an office in the latter city, and handled his work with such skill and ability that he was very soon thereafter admitted to practice in the New Hampshire Circuit Court. In 1857 Mr. Upton was appointed justice of the police court of Manchester, and his length of service—seventeen years—is sufficient comment upon the skill, ability and character he brought to that position.

In 1855 and 1856 Mr. Upton was elected as a member of the "Liberty" party to represent Manchester in the lower New Hampshire house, and upon the organization of the republican

party he took an active interest. From 1863 to 1865 he held, by appointment of President Lincoln, the position of commissioner of the board of enrollment for the second congressional district of New Hampshire. Mr. Upton's public work on Manchester's school committee was of great value, and he took particular interest in the training school. He was a prominent and earnest worker for the cause of temperance, and gave much of his time to Sunday school interests.

In 1875 he decided to follow Horace Greeley's advice and "go west." He settled in Iowa, where he entered the mercantile business. After eight years of life in a prairie city, he returned to the hills of the Granite State, settled again in Manchester, where he both practiced law and interested himself in mercantile pursuits.

In 1857, Mr. Upton married Jennie L. Merriman, and they were the parents of one child, which died in infancy.

CYRUS A. SULLOWAY was born in Grafton, New Hampshire, on the eighth day of June, 1839. His parents were Greeley and Betsy L. Grafton, and were among the prominent people of their neighborhood. The district schools, together with the academics at Andover and Colby, furnished young Sulloway with his education. The training in these institutions bent his mind toward the legal profession, and in 1861 he commenced the reading of law under the instruction of Pike & Barnard, well known members of the New Hampshire bar, with offices at Franklin. By close application he finished the required course in two years, and was admitted in 1863. After carefully considering the question of locality, Mr. Sulloway settled in Manchester, entering into co-partnership with Samuel D. Lord. This business connection was one of unusual harmony and success, continuing for ten years. In 1873 Mr. Sulloway formed a co-partnership with Elijah M. Topliff and

Dennis F. O'Connor, our subject being the senior member of the firm.

Politics and public questions always had great attraction for Mr. Sulloway, and previous to 1880 he gave to the republican party and its principles all the time and attention he could spare from his constantly increasing business. In 1872 and 1873 he was a member of the lower house of the New Hampshire legislature, serving on the elections and judiciary committees, where his natural ability and legal training were of great service. From 1873 to 1878 he was deputy collector of internal revenue. At this period the currency question became acute, and Mr. Sulloway was in favor of greenbacks; he ran for congress on that ticket in 1878 and in 1880 joined the democratic party.

In 1864 Mr. Sulloway was united in marriage to Helen, daughter of Jonathan W. and Theodorah (Dickinson) Fifield.

DANIEL CLARK, Manchester, son of Benjamin and Elizabeth (Wiggin) Clark, was born in Stratham, New Hampshire, in 1809. His parents were hardworking New England farmers, and both were ambitious for the success of their family. They lived near Exeter. Daniel remained at home until thirteen years of age, attending the district school when it was open and helping on the farm. He acquired information easily, read all the books he could get, and early preferred books and study to farm work. At the age of thirteen years he entered the academy at Hampton, New Hampshire, where he continued at intervals for about four years, when he made plans for a college course. He continued his studies at Hampton, teaching school part of the time, entered Dartmouth, from which institution he graduated with honors in 1834. Among Mr. Clark's classmates were Albert Baker, Moody Currier, Richard B. Kimball, Edward A. Lawrence, Newton E. Marble, Alphonso Wood, each of whom gained distinction in after years. During his years at college Mr. Clark taught

school winters, also while reading law, eight winters in all, thus defraying his educational expenses.

After graduation Mr. Clark commenced the study of law in the office of General John Sullivan, Exeter, where he remained eighteen months; he then entered the office of James Bell, afterwards United States senator from New Hampshire, and was admitted to the bar in 1837. The same year he opened an office in Epping, and in 1839 removed to Manchester, where he was among the first to open a law office, accepting the idea then prevailing that a large manufacturing city was destined to



DANIEL CLARK.

spring up at no distant day around the Amoskeng falls, on the Merrimac river, and with characteristic foresight he led the advance guard to that field of promise before the clatter of the loom or the buzz of the spindle had disturbed its then comparative solitude. He soon acquired a satisfactory practice, which afterward grew to be one of the largest in the State. For twenty years he was on one side or the other of nearly all important trials in the county, attending the courts also in Merrimack and Rockingham counties. He was employed on behalf of the State in the preliminary ex-

amination in the "Parker murder trial," being occupied almost continuously for a period of nearly two months. He succeeded in procuring the extradition from Maine of the supposed murderers after a lengthy trial in that State, and after a hearing lasting nearly a month, before the Police Court of Manchester, procured their commitment to answer for the crime of murder. Opposed to him as counsel were General Franklin Pierce (afterwards president of the United States), General B. F. Butler, Josiah G. Abbott and the late Charles G. Atherton—an array of legal talent seldom seen in this State in those days.

During the period of his active practice the bar of Hillsborough county was unusually strong. Among its prominent members were Benjamin M. Farley, James U. Parker, George Y. Sawyer, Charles G. Atherton, Samuel H. Ayer, Samuel D. Bell and George W. Morrison. General Franklin Pierce, of the Merrimack bar, also generally attended the courts in Hillsborough county. With these and other able lawyers Mr. Clark spent the most of his active professional life, and was recognized as their peer. His practice was as varied as it was extensive. Whatever he undertook was thoroughly done. He was loyal to the court, faithful to his clients, courteous to opposing counsel, and kind and ungrudging to the younger members of the profession. In his arguments to the jury he was never wearisome. He wasted no time on immaterial matters. Legal papers drafted by him were models of accuracy and clearness. They were also remarkable for their brevity, all useless verbiage being avoided. In his writs the cause of action was briefly and clearly set out, and it was rare that he had occasion to apply for an amendment. His clients became his fast friends. His charges were moderate, and no client went away feeling that undue advantage had been taken of his position or that his interests had not been fully protected.

It is unfortunate, perhaps, for his legal reputation that Mr. Clark was drawn into politics. But it was his fortune to live in times when

questions of great public interest were being discussed and settled, and it was inevitable that a person of his ability, education and temperament should entertain pronounced views on public questions. With the acquisition of California came the question of extension or restriction of slavery, the repeal of the Missouri compromise, the civil war, the abolition of slavery, and the reconstruction measures after the close of the war. In these environments it was hardly possible for Mr. Clark not to have some inclination towards political life. In 1842 he was elected one of the representatives from the town of Manchester to the legislature, and was re-elected in 1843, and again elected in 1846. In 1854, after the adoption of the city charter, he was elected representative from his ward, and re-elected in 1855. In 1849, 1850 and 1851 he was a candidate for the State senate, but his party being in the minority in the district, he failed of an election. He acted with the whig party until its dissolution, when he helped to form the republican party. In 1856 he was a member of the national republican convention, and in November of that year was elected one of the presidential electors in New Hampshire, and voted for Fremont and Dayton for president and vice-president respectively. In 1853 the legislature was called upon to elect two United States senators. For the first time in a quarter of a century, with a single exception, the democratic party was in a minority. The opposition was composed of the whig party, then on the point of dissolving, the American party, commonly known as the know-nothing party, and the free-soil party. These elements a year later were fused in the republican party. By common consent John P. Hale was nominated for the short term, and the contest for the long term was between Mr. Clark and James Bell. In the senatorial caucuses the latter was nominated and subsequently elected by the legislature. The contest was a friendly one, so that when, two years later, in 1857, the legislature was called to fill the vacancy in the office occasioned by the

death of Senator Bell, in obedience to the common wishes of their constituents, the republican members nominated and the legislature elected Mr. Clark. Upon the expiration of his term he was re-elected in 1860 with little opposition. He witnessed the rise, progress and overthrow of the rebellion during the ten years he spent in congress; he served upon some of the most important committees, and was chairman of the committee on claims, and, during portions of two sessions, president pro tempore of the senate in the absence of Vice-President Hamlin. He was a firm supporter of the various war measures adopted for the suppression of the rebellion, and had the confidence of President Lincoln and Secretary Stanton. He failed of a re-election in 1866.

In the summer of 1866 a vacancy occurred in the office of judge of the United States District Court for the district of New Hampshire, and Senator Clark was nominated for the position by President Johnson, and unanimously confirmed by the Senate. He thereupon resigned his seat in the senate and entered upon the discharge of his judicial duties. In 1876 he was a member and president of the convention called to revise the constitution of New Hampshire.

Judge Clark, in 1850, formed a co-partnership with his brother David in the practice of the law, which was dissolved in 1856. In December, 1856, he entered into co-partnership with Isaac W. Smith, who read law with him in 1848-50. Their firm was dissolved in December, 1861, at which time his practice of the law may be said to have substantially ceased. So much of his time was absorbed with congressional affairs and other public duties between sessions, that he had but little time or inclination to follow the courts or attend to the calls of clients in the office.

Judge Clark was fully identified with the growth and history of Manchester. He took great interest in its material prosperity, and merited and received the confidence of its inhabitants. Besides representing the town and city five years in the legislature, he held

various offices of trust, viz.: member of the school board, chief engineer of the fire department, trustee of the city library, city solicitor, trustee and president of the Manchester Savings bank, director of the Amoskeag Manufacturing company, and trustee of the State Industrial school. No citizen of Manchester, with possibly the exception of the late Governor Straw, ever exerted so much influence for its growth and prosperity as he.

Judge Clark was twice married—the first time in 1840 to Hannah W. Robbins, who died in October, 1844, leaving no children; the second time to Anne W. Salter, in 1846. They had four children—three sons and one daughter.

AARON FLETCHER STEVENS, the son of John F. and Martha Stevens, was born in Londonderry, New Hampshire, in 1819. For a number of years his father had been a sea captain, but the life away from home being unpleasant to him, he moved from Massachusetts and settled in Londonderry about 1818. There he remained for ten years, during which time our subject had the advantages to be derived from the local schools, already well known for their high scholarship. Mr. Stevens then moved his family first to Manchester and later to Peterborough. For four years young Stevens worked half the time in Governor Steele's factory and the other half attended school. His parents were ambitious for their son, and for several years had been saving money to send him to the Pinkerton academy, which was located at Londonderry. Financial matters, however, still prevented continued attendance at the academy, and he alternated his course with working as a machinist and teaching school. In 1842 Mr. Stevens commenced the reading of law under the guidance of George Y. Sawyer, of Nashua, and was admitted to practice three years later. At the same time Mr. Stevens was invited to become a partner of Mr. Sawyer, a business connection which attracted the attention of the whole bar

of the county. This gave him an excellent start, and from that time on his career was marked by a financial success quite in contrast with that which had been his lot in previous years. In 1858 he formed a co-partnership with his old friend, Aaron W. Sawyer, a sketch of whose life appears in this work.

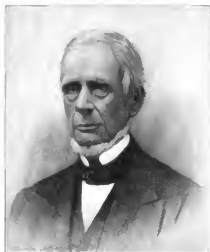
In politics Mr. Stevens believed in agitating entirely within party lines, and through his wise counsel and aggressive work the whig party gained many recruits in New Hampshire. It was in 1840 that he first became prominent in party councils, and in those days party spirit ran high. In 1849 he represented his adopted city in the lower branch of the State legislature, and again in 1854, 1856 and 1857, and during these memorable years his clear judgment and readiness as a debator won many a point from the opposition. When the whig party began to disintegrate he was one of the first to assist in organizing the republican party.

When the call was issued for men to defend the city of Washington after the firing on Fort Sumpter, Mr. Stevens promptly enlisted, and was commissioned major of the First New Hampshire infantry. His regiment was discharged after three months, and upon returning home he took up the practice of law until the following year, when he was commissioned colonel of the Thirtieth New Hampshire volunteers, which command he promptly organized. His war record was above reproach, and in the latter part of 1864 he was brevetted brigadier-general.

Again reaching home after the war he attended to professional affairs until he was elected to the fortieth congress, which opened its sessions in March, 1867. General Stevens was re-elected, but served only the two terms.

General Stevens was married in 1861 to Miss Adelaide M. Johnson, of Lynn, Massachusetts.

HERMAN FOSTER, lawyer, town treasurer, senator, philanthropist, patron of education, and with all a fine example of the self-made man, was born at Andover, Massachusetts, October 31, 1800. When young Foster was ten years of age his father moved to Hudson, New Hampshire. Having had to give up his preparation for college, he early began a business career in Boston, and the business training thus obtained was the cornerstone of his success in later life. He liked books, however, and gave much of his spare time to reading law, but began his law studies in earnest with Henry B. Chase, of Warner,



HERMAN FOSTER.

and was admitted to the bar in December, 1839. A year later he began his practice in Manchester, New Hampshire.

Mr. Foster's legal work brought him in contact with business enterprises which needed his experience and advice, and he was made a director or officer of several companies, among which were the Manchester and Lawrence railroad, Amoskeag bank, Amoskeag National bank, Manchester Savings bank, Manchester Gas Light company.

Remembering the difficulty he had in obtaining books in his youth, as soon as his circum-

stances permitted, Mr. Foster began to educate public opinion in favor of a public library, and was one of the organizers of the first library established in Manchester.

Mr. Foster preferred the routine of business and the quiet of home life to the excitement of politics, but, as is always the case, the public need broad minded men in its legislative halls, and he consented to serve as a member of the law making body, more because he thought it was the duty of all men to interest themselves in public affairs than because the office gave him pleasure. He was very conscientious in his law practice, and decided questions only after careful study. In this way he established great confidence in his ability, and was a successful lawyer.

Harriet M. A. Whittemore of West Cambridge, Massachusetts, became his wife in November, 1826. On February 17, 1875, Mr. Foster ended a useful life.

DANIEL NEWCOMB, a man whose praises the historians of Keene never tire of singing, was born in Norton, Massachusetts, in 1746. After a thorough preliminary education, he entered Harvard and was graduated therefrom in 1768. Ten years later he moved to Keene, but did not begin the practice of law there until 1783. Mr. Newcomb was for a time the only lawyer in Keene, but this fact did not prevent his pursuing the business of his office with great energy. As a lawyer he was sound and quick of apprehension; his mind perceived clearly the relations and the obscurities of a cause, and he patiently evolved it from its intricacies. As an advocate he was calm and logical.

Judge Newcomb was sent as a delegate to the county convention held at Walpole in 1780, and was clerk of that body; he was appointed chief judge of the Cheshire county court in 1791; was justice of the Superior Court of Judicature from 1796 to 1798; was the first State senator (1800) elected from Keene, resigned a few months later, and was

again elected to the same office in 1805. In each of these positions he served his constituents in a manner approved by them and honorable to himself.

As a lawyer and as a judge Mr. Newcomb was greatly admired, but perhaps as a plain citizen he was the most beloved by his neighbors and townspeople. Public spirited and generous, he employed much of his time and means in advancing the interests of the community. He established, at his own expense, a grammar school, which was known as "Mr. Newcomb's school," and in 1796, with Noah Cooke, paid practically all the bills for the erecting of the first court house in Cheshire county. Before that date the courts had been held in "meeting houses." Judge Newcomb died July 14, 1818.

FRANKLIN PIERCE, fourteenth president of the United States, was born in Hillsboro, New Hampshire, on the 23d of November, 1804. His father was Benjamin Pierce, a general of the revolutionary period who served throughout that war, and who was governor of New Hampshire in 1827 and 1829. His early and college preparatory studies were pursued at Hancock, Franconia and Exeter, and in 1820 his college course was commenced at Bowdoin. Several of his classmates later gained distinction, among whom were Nathaniel Hawthorne, John P. Hall and James Bell. After graduation in 1824 he studied law three years in Northampton and Amherst, Massachusetts, and was admitted to the bar at the end of that period, when his first office was opened in his native town. Being a close and earnest student, always going to great lengths to get at all the law and the facts, he at once came into local prominence. Great talent for organization, remarkable capacity for public questions, strength in debate, uniform courtesy and his espousal of democratic principles soon made him the leader of that party in his section, and two years after commencing his legal practice he was sent to the New Hampshire

legislature from the Hillsboro district. This office he held four years, the last two of which he was speaker of the house. In 1833, while still speaker of the New Hampshire house, he was elected to the national house of representatives from his home congressional district, where for two terms he served his constituents, his state and his nation with great credit. Before his second term as congressman had expired he was elected (1837) by the New Hampshire legislature to represent that State in the United States senate, when, although only thirty-three years of age, his broad statesmanship and his fund of mental resources made



FRANKLIN PIERCE.

him easily one of the leaders of that body. Not only in the detail of the senate's affairs was his judgment sought, but his easy, refined manner made him the recipient of many invitations to the social functions of the day. He was popular with the senators and the "gallery" and soon became one of the best known men in the country. In 1842 he resigned his seat in the United States senate, removed his home to Concord, and resumed the practice of his profession. Three years later, the appointment of Levi Woodbury to the Bench of the Supreme Court of the

United States made a vacancy in New Hampshire's representation in the national senate, and Governor Steele offered the place to Mr. Pierce, but he declined on personal reasons. He likewise declined the nomination as governor of his state and a seat in President Polk's cabinet. His country's need in time of war, he said, was the one call which would again separate him from his family for any length of time.

When the Mexican war broke out in 1847, New Hampshire was called upon for a battalion of soldiers, and Mr. Pierce was one of the first to enlist as a private. March 3, 1847, he was commissioned brigadier-general, and a few weeks later sailed with a detachment from Newport, Rhode Island, landing at Vera Cruz the latter part of the following June. A month later he started to reinforce General Scott, then in the interior of Mexico, and after several skirmishes, in which his men did not come off second best, he reached his superior officer at Puebla. His military achievements did not in the least dim his great civil record, and upon his return home he was presented with a handsome and costly sword by the New Hampshire legislature. Except when he presided over the State constitutional convention held at Concord in 1850, General Pierce held no public offices from the time of his return from Mexico until 1852. In that year the New Hampshire democratic convention offered him its support for the presidency at the national convention, but he declined to permit the use of his name. However, the convention, which was held at Baltimore in June, after nearly half a hundred ballots, nominated him by a vote of two hundred and eighty-two to eleven. The election was carried by General Pierce, the electoral college standing two hundred and fifty-four for him and forty-two for General Scott. General Pierce was inaugurated president March 4, 1853.

The intense political excitements, both foreign and domestic, which marked President Pierce's administration can be judged somewhat by the following: The boundary question between the United States and Mexico was

settled by the acquisition of Arizona; a Pacific railroad route was explored; a fishery dispute between Great Britain and the United States was peacefully settled; the Missouri compromise was repealed; Kansas and Nebraska were organized as territories; a commercial treaty with Canada was negotiated; Commodore Perry negotiated the treaty with "the Yankess of the East," Japan; the English consuls at New York, Philadelphia and Cincinnati, and the minister to Washington, were all dismissed.

After serving his term as president, General Pierce travelled in the old country for more than two years, and then renewed his law practice at Concord.

President Pierce was married to Mary A. Appleton, and they had two sons, Benjamin and Frank. The former was killed in a railroad accident, and the latter died when a child. President Pierce died October 9, 1869.

SAMUEL DINSMOOR, born at Windham, Vermont, on the first day of July, 1766, was only three generations removed from William Dinsmoor, the pioneer. William had a son, Robert, whose son, John, was the father of our subject. The many difficulties attending the college preparatory work in a new country were great, but young Dinsmoor had a habit of overcoming difficulties and not allowing them to overcome him. He matriculated at Dartmouth in 1785 and was graduated therefrom four years later.

The historians do not give us much information about the future governor's life for about three years after graduation, but it is recorded that he moved to Keene in 1792 and became both popular and prominent. He organized the Keene Light infantry, which became the best light infantry company in the State. He was admitted to the bar in 1797 and almost immediately took a prominent position in his profession. In 1808 Mr. Dinsmoor was appointed postmaster of Keene and in 1811 was elected to congress, and during the war of 1812 was a strong and able supporter of the

war measures made necessary by that conflict with Great Britain. After his term in congress, he was appointed collector of direct taxes; then judge of probate, and in 1821 counselor. In 1823 Mr. Dinsmoor made his first attempt to gain the governorship, but was defeated by Levi Woodbury, but was elected to that high office in 1831, 1832 and 1833, making a very enviable record. He passed away March 15, 1835.

Samuel Dinsmoor, jr., son of the first by that name, was born May 8, 1799; graduated from Dartmouth; in 1829 and 1830 was clerk of the senate, and in 1849, 1850, 1851 was governor of New Hampshire. He died February 24, 1869.

SOLOMON KIDDER LIVERMORE, pioneer lawyer of Milford, New Hampshire, the son of Rev. Jonathan Livermore, was born in Wilton on the 2d of March, 1779. He was a direct descendant from John Livermore, who emigrated from England in 1634 and settled with his family in Watertown, Massachusetts. Home instruction was all that Mr. Livermore received for a few years, as there were no district schools in the neighborhood of his father's home, but later he had the privilege of attending them. He was a great lover of nature, and in summer spent much time helping in the fields, and during the winter oftentimes worked in the woods. This outdoor work fostered a love for his particular part of the country, a love which was never lost, in fact it grew as the years rolled by.

Mr. Livermore prepared for college at a boys' school conducted by a Mr. Pemberton in Billerica, Massachusetts, the birth place of his mother, and graduated from Harvard in 1802, having matriculated in 1799. Many in his class became prominent citizens of Massachusetts. After graduation Mr. Livermore entered the law office of Oliver Crosby, of Dover, New Hampshire, with whom he studied. In 1806 he was admitted to the bar, and after three years' practice in Rockingham county moved

to Hillsborough county. He was very liberal and honest in his practice, and often advised his clients to settle their differences without taking them into court, thus instilling a sense of justice in them. He was always interested in the public welfare, and selfish or narrow dealings by public officials invariably met his earnest opposition.

Mr. Livermore was a republican, having become so through various stages. His former political affiliations were with free-soil sympathizers, and prior to that was a whig, having followed the federals into the whig party when those two factions were merged. Political



SOLOMON K. LIVERMORE.

partisanship of a very pronounced type existed during Mr. Livermore's time, and party stripes were easily shed.

In religion Mr. Livermore was first a Congregationalist, being a member for about twenty-five years of the First Congregational church. Later he became a member of the First Unitarian society.

Mr. Livermore was united in marriage to Miss Abigail Atkins Jarvis, of Cambridge, Massachusetts, and they were the parents of six children. Thomas L. Livermore, a grand son, was a colonel in the civil war, and two

other grandsons were in the navy. Education elicited much time and attention on the part of Mr. Livermore. His life was one of helpfulness to all, his interest in public affairs making him an excellent citizen. He passed away in July, 1859.

JEREMIAH MASON was the most formidable antagonist Daniel Webster had in the courts during the latter's residence in Portsmouth, New Hampshire. These two legal and intellectual giants were almost always on opposite sides of the principal causes tried in Portsmouth and vicinity and Webster credited Mason with being the one lawyer whom he feared; the one advocate more than any other whose opposition trained Webster to go to the bottom of the facts and the law of every case, regardless of its seeming importance. Mr. Mason was a ready speaker, conciliating, yet of unquestioned firmness. In all public positions, he was faithful and fully equal to the demands upon him. In private life he was genial, easy to approach and seldom let pass an opportunity of doing a kindly act and labored effectually to promote the interests, material and educational, of the three New Hampshire towns in which he spent the greater part of his active career—Westmoreland, Walpole and Portsmouth.

Jeremiah Mason was born in Lebanon, Connecticut, on the 27th of April, 1768, and died in Boston, Massachusetts, the 14th of October, 1848. He was the son of Jeremiah Mason, a colonel in the Revolutionary war who commanded a company of minute men at the siege of Boston; and fifth in descent from Major John Mason, a pioneer. He graduated from Yale in 1788, was admitted to the bar in 1791 and began active practice in Westmoreland, New Hampshire; in 1794 he moved to Walpole, in that State, and two years later took up his residence in Portsmouth, where he lived thirty-four years. After 1832 Boston, Massachusetts, was his home.

During his residence in the Granite State,

Mr. Mason was several times a member of the lower house of the legislature and took a very prominent part in the revision of the New Hampshire code; he drafted the report of the legislature on the Virginian resolutions referring to the Missouri compromise; was attorney-general of his State in 1802; in 1813 was sent to the United States senate as a federalist and held that office four years. During his senatorial term he was active in the debates on subjects growing out of the war of 1812, of which conflict he was a staunch supporter. It might be said that Mr. Mason was indirectly the cause of the repeal of the charter of the United States bank. He was manager of the branch bank at Portsmouth, New Hampshire, and caused some dissatisfaction by his strict and prompt actions in handling the collections. The followers of Jackson used this as a pretext for petitions asking the revoking of the charter. Two of these petitions were sent from Portsmouth, thus starting the contest which finally ended with the national government going out of the banking business.

Mr. Mason was very prominent in New England, but not very well known in the balance of the country. This was doubtless due in a measure to his refusal to furnish the newspapers with copies of the speeches he delivered while a senator. The honorary degree of LL. D. was conferred upon him in 1811 by Bowdoin; in 1817 by Harvard; in 1823 by Dartmouth. Mr. Mason's portrait in photogravure appears with part eighteen of this work.

AARON WORCESTER SAWYER, son of Aaron F. and Hannah (Locke) Sawyer, was born in Mont Vernon, New Hampshire, October 11, 1818. He was a descendant of Rev. Samuel Locke, D.D., who was president of Harvard college from 1770 to 1773. Judge Sawyer was fortunate in his early training, as his father was a gentleman of the old school, liberal in his views and a Christian character. His mother was an intellectual woman with much refinement, and impressed her character





upon our subject in a manner which showed in his development as a young man and his noble character in later life.

After spending a few years in New England's cradle of liberty, the district school, his father's change of residence to Nashua enabled him to take advantage of a higher education which was to be obtained in the Nashua academy. This was supplemented by work in the academies at Hanccock and Derry. During this educational period young Sawyer's attention was attracted to the law, and as soon as circumstances would permit after leaving the academies, he commenced preparation for the

continued until 1853. Mr. Sawyer then practiced alone for five years, when he connected himself in partnership with Aaron F. Stevens, and for twenty-five years they ranked with the leaders of the New Hampshire bar.

Notwithstanding the fact that Judge Sawyer disliked the limitations put upon public men by party organizations, his eminence as a lawyer and his high character as a man drew him into political affairs. Besides some minor local offices he served the people of Nashua as a representative in both houses of the State legislature; for nine years he was register in bankruptcy, and by appointment of Governor Cheney in July, 1876, was associate justice of the Supreme court. In all these positions Mr. Sawyer gave the same time and attention as he would have given to his private affairs, and always won the confidence and esteem of those with whom he had to deal.

Mr. Sawyer was twice married, first to Mary Frances Ingalls of New York city, and second to Fanny Winch of Nashua. He died August 23, 1882, at his home in Nashua.



AARON W. SAWYER.

legal profession. While thus engaged he paid his way by teaching school during winters and tutored the sons of well-to-do families.

In 1816 Judge Sawyer opened an office in Nashua, having been admitted to practice two years earlier. Success in minor ways crowned his efforts from the start, and this success grew with passing years. His retentive memory and close application to whatever work he had in hand made him a keen observer of human nature. This faculty produced in him a powerful advocate. In 1848 he formed a co-partnership with Charles G. Atherton, which

LEVI WOODBURY was born in Frances-town, New Hampshire, on the 22d of December, 1789. His father was Peter Woodbury, at one time a State senator and at various times a holder of town offices; his first American ancestor was John, who came from Somersetshire, England, to Cape Ann in 1624. Two years later he settled in Naumkeag, (now Salem) Massachusetts. Early in life Levi developed three traits of character—industry, native ability, faithfulness to every task—which made him the power he was in later life.

Dartmouth graduated young Woodbury in 1809. He began the study of law with Samuel Dana, of Boston, then read with Judge Jeremiah Smith, at Exeter, and finally entered and graduated from the then famous law school at Litchfield, Connecticut. He was admitted to practice in 1812 and began at once in his native town.

As is often the case with lawyers, Mr. Woodbury soon drifted into politics and became a local leader of the democrats. In 1816 he was made clerk of the New Hampshire senate and the following year was appointed associate justice of the New Hampshire Supreme Court, in both of which offices he acquitted himself with honor and greatly increased his reputation. In 1819 his personal and public work took him so often to Portsmouth that he decided to locate there. In 1823, Mr. Woodbury was elected governor of his State and two years later was speaker of the New Hampshire lower house. The latter position he resigned the same year, when elected to the senate of the United States.

In the national upper house his reputation had preceded him and Mr. Woodbury at once became a commanding national figure. In 1830 his speech on Foote's resolution "on the public lands," the resolution which called forth the famous speeches of Webster and Hayne, earned him the title of "Rock of the New England democracy." From 1831 to 1834 he served as secretary of the navy under President Jackson, and from 1834 to 1841 as secretary of the treasury under President Van Buren. That made ten consecutive years Mr. Woodbury was a member of the president's official family, and so well was his work approved at home, he was again sent to the United States senate. In that body it fell upon him to defend the independent treasury system which he had adopted while secretary of the treasury, and to lead the forces which defeated the banking laws proposed and urged by President Tyler and Henry Clay. In 1844 he voted for the annexation of Texas. During his cabinet positions he declined the mission to Spain, also the chief justiceship of the New Hampshire Supreme Court, and in 1845 the mission to England. The following year, 1846, his appointment as associate justice of the United States Supreme Court was confirmed by the senate, which position he accepted. At the time of Judge Woodbury's death, September 4, 1851, he was the most

prominent candidate in the democratic party for the nomination as president.

The principal published legal works of Judge Woodbury are: The second volume of the New Hampshire Reports, W. M. Richardson being his associate in the preparation of this work; his decisions in "Reports and Cases," edited by his son, C. L. Woodbury, and G. Minot, 3 vols., 1847 to 1852; "Writings—Political, Judicial and Literary," collected by N. Capen, 3 vols., 1852. Dartmouth conferred upon Mr. Woodbury the degree of LL. D. in 1823, and Wesleyan in 1843. In his will he left one thousand dollars to his native place, Francesstown, the income from which was to be used to buy books to be awarded to the best scholars in the district. Mr. Woodbury's wife was Elizabeth, daughter of Asa Clapp, of Portland, Maine.

JOEL PARKER* was born in Jaffrey, New Hampshire, whose history he commemorated by an address on occasion of the centennial celebration of its settlement, in 1873. His birth occurred January 25, 1795. His father was an early settler in that town, having removed there from Pepperell, Massachusetts. He was of that class of intelligent and independent farmers from whom have sprung so many of the leading and influential men of New England. He was himself a leading man in the county in which he resided; and, among other places of honor and trust, held the office of judge of probate for that county. One of his sons was a prominent lawyer in Amherst, New Hampshire, and also held the office of judge of probate in that county. It was in his office that his brother Joel read law as a student.

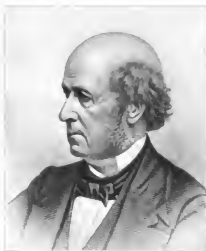
Joel Parker was graduated at Dartmouth college in 1811, in the same class with Chief Justice Shepley, of Maine. He was admitted to the bar in 1815, and established himself in practice of the law in Keene. The rank he early attained in his profession may be in-

* Extracts from a memoir by Hon. Emory Washburn (1870).

ferred from his appointment to the bench of the Superior Court of New Hampshire in the year 1833. In 1838 he was promoted to the place of chief justice of that court, and held the office until 1848, when he resigned it, and in the same year became a professor in the law school of Harvard university. He resigned this place in 1868, and from that time till his death, August 17, 1875, he was actively engaged in the management of his own business affairs. These were the only offices of importance which he held at any time, except that of a representative for two years in the legislature of New Hampshire, and a commissioner for revising the Statutes of New Hampshire, and a like service in Massachusetts; though it should be added that he held the professorship of medical jurisprudence in Dartmouth college from 1845 to 1857, and a like professorship in the Medical college of New York, and gave one or more courses of lectures upon the Constitution in Dartmouth college, and in the Columbian Law school in Washington. His official honors as well as duties, it will be perceived, were connected almost entirely with law and its administration. His alma mater in 1837, and Harvard in 1848, conferred upon him the degree of LL.D. He was a member of the American Academy of Arts and Sciences, and in 1859 was elected a member of the Massachusetts Historical society, which he held till his death.

We find in a notice of Judge Parker, contained in Alibone's "Dictionary of Authors," a catalogue of publications the production of his pen, more than twenty in number. These include an address before the Phi Beta Kappa society of Dartmouth college; addresses commemorative of distinguished men; essay upon Constitutional and International Law; and articles in the "North American Review," without mentioning a paper upon the "Origin, Organization, and Influence of the Towns of New England," published by the Historical society, or a lecture upon the first charter and early religious legislation of Massachusetts, which formed one of the course of lectures by

members of that society, delivered upon the Lowell foundation. His thoroughness of investigation rendered him a safe and reliable contributor to the resources of local history; and among the last of his contributions, to this class of literature, was the address, of which we have spoken, on the occasion of the centennial celebration of his native town, in 1873, in which the freshness and playfulness of forty run through the pages which he penned when close upon the confines of four score. Nor do the publications mentioned embrace all the elaborate and well-considered productions of his pen. But they are sufficient to justify the



JOEL PARKER.

qualities of diligence and thoroughness which have been ascribed to him, as characteristics of his habits of thought and life. A perusal of his published works, including his opinions as a judge, would enable one to go deeper into the character of his mind than can be done in a brief biography, and detect some of the sources of that power and efficiency which he brought to bear upon any subject in which his judgment and convictions were enlisted.

Perhaps the most memorable instance of this fearless adherence to his own convictions, when opposed to the opinions of others however eminent in place and influence, was the differ-

ence of opinion which arose between the Circuit Court of the United States and the Superior Court of New Hampshire, upon the construction to be given to a single expression in the bankrupt law of 1841, in the discussion of which Judge Story represented one side of the question, and Chief Justice Parker the other. It turned upon the meaning of the word "lien" as used in that statute, and whether it extended to the liens created by the statutes of the States by attachments upon *mesne* process of the property of a debtor at the suits of creditors. The court of New Hampshire held that it did. The Circuit Court maintained the contrary. Upon its decision depended the disposition to be made of a considerable amount of property held by attachment by a sheriff of New Hampshire, but claimed by the assignees in bankruptcy of the debtor, on the ground that the process in bankruptcy dissolved the attachment, and avoided the claim of the sheriff under the same.

The language of both courts was alike assured and unambiguous. On the one side Judge Story insisted that the District Court of the United States might enjoin the creditor of the bankrupt from proceeding by levying upon the property under the process of the State; and, if he should thereafter proceed in disobedience of such order or injunction, "the District Court ought to proceed to enforce obedience thereto, as in other cases of the violation of injunctions." Chief Justice Parker, in reply to this intimation, while declaring the judgment of the court, took occasion to say that, if the plaintiff should ask the interference of the State Court, it would be their duty to enjoin and prohibit the bankrupt and his assignees, the creditors and all claimants of the property attached, from attempting to procure any process from any court which was not acting under the authority of the State of New Hampshire, with a view to prevent the entry of judgment, in such suits, or to prevent the execution of the final process issued upon the judgments when obtained. And he added, "If any such injunction is issued by us, in any

case, it will be our duty to punish any infraction of it when brought to our notice, by prompt action," etc.

When it is considered that the point of variance between these courts grew out of the construction to be given to a single word made use of in a public statute, in which the legislature of New Hampshire were disposed to sustain the judgment of its own court, it was fortunate for the country that all occasion for a collision of jurisdiction was removed by a decision of the Supreme Court of the United States in harmony with the views entertained by Chief Justice Parker; and no harm came from this conflict of opinion, such as often arises between judges of equal learning, wisdom, and powers of discrimination. The numerous opinions which he has left in the published volumes of the reports of the court of New Hampshire, many of them calling for a high measure of sound learning and profound analysis, when taken in connection with the uniform testimony of the bar of that State and of those who knew him in his judicial capacity to his fairness and impartiality, leave little occasion to enlarge upon his eminent qualifications for that office, or the high reputation he earned during the fifteen years that he occupied the bench.

Of his faithfulness and ability as a legal instructor in his office of professor in the law school, little need be said beyond the fact that he brought to it the same habits of diligence, careful preparation, and a thorough mastery of his subjects, which he had shown as a lawyer and a judge. As new subjects and questions of interest arose, he gave them the attention which their importance deserved, and not only gave his class the benefit of his research, but in several instances, as has already been stated, embodied his views in a printed form. The many hundred who shared his instruction with that of the other teachers in the school, and are now scattered through the Union, would, I am confident, pay a willing tribute to his learning, his courtesy, and his generous sympathy in whatever concerned their progress

and their ultimate success in life. The relation that has always subsisted between the students of that school and its instructors has been that of friendship and mutual respect, united to a desire to communicate and receive instruction; and it lost none of its characteristics so long as Judge Parker held the office of Royall professor in that institution. And the fruits of his long and active experience in the profession could hardly have failed to give an added value to the learning which he gathered from the books, in giving instruction to his pupils. His associates, moreover, in the instruction, found him an earnest and interested co-laborer in whatever tended to advance the interests of the school.

As a constitutional lawyer, while he did not belong to the school of strict constructionists, he had for the Constitution itself a profound veneration and respect. And, when in the conduct of our civil war he saw what he regarded a departure from the true construction of that instrument, he did not hesitate to point out in their true light what he deemed would be the effect and consequences of such departure. Among the subjects to which he devoted time and attention during this conflict were those of the Right of Secession, *Habeas Corpus*, and Martial Law, the Case of the Trent, and International Law, the Character of the Rebellion, and the Conduct of the War; and upon each of these he has left publications which will long survive the causes and occasion which brought them out. They are full and exhaustive upon the subjects of which they treat, and deserve a place among the permanent constitutional literature of the country.

Among the characteristics of Judge Parker's mind, which ought not to be passed unnoticed, was one which could hardly have been anticipated, when contemplating him as the cautious, critical, and exact lawyer and judge; and that was his love of poetry, and his keen relish of the beautiful and tender in it, as well as of the heroic and descriptive. He was at home in Shakespeare, and had ready at his command a rich store of treasured poetical

thought, which he had gathered from a frequent perusal of some of the choicest English and American poets. But it was only among his familiar friends that he indulged in any thing like a free use of what he had gathered from a department of literature which, apparently, lay outside of his ordinary line of thought and duty.

Somewhat late in life, he married Miss Mary M. Parker, a daughter of his former partner in business, who with two of their children, a son and a daughter, survive him. In private life, his influence and example were always in a right direction. In his benefactions, he was wise as well as liberal, and many were the sharers in the aid and encouragement which he cheerfully bestowed upon such as deserved them. His home was to him a place of special and ever-growing attraction; and he manifested his taste, as well as a desire to make it every thing that a home should be, by the pains and money which he expended upon it. In his intercourse with others, he was genial, free, and affable, and could unbind to playfulness and familiarity without compromising either dignity or self-respect. The cheerfulness and urbanity with which he always greeted his friends and associates added much to the pleasure of his society as a man of liberal culture and broad experience, and marked him out as a man whom it was a privilege to know, and one not easy to forget.

ISAAC WILLIAM SMITH was a native of the Granite State, having been born in Hampstead in 1825. His parents were Isaac and Mary (Clark) Smith, who cherished large ambitions for their children, and although poor, as the world even in those times counted poor, were enabled by sacrifice to give their son an educational legacy in lieu of a financial one, and well, indeed, did that son by high character and attainments repay them. They also instilled into his every day conduct as a boy a sense of honor and regard for others, which he carried through life. The country

schools and the Salisbury academy fitted young Smith for Phillip Andover academy, and that in time prepared him for Dartmouth college, which he entered with the class of 1842. After graduation Mr. Smith went to Lowell, Massachusetts, and read law with William Smith of that place; then he moved to Manchester, New Hampshire, and continued his studies with Daniel Clark, a sketch of whose life appears in this work. He was admitted to practice in 1850, and a few weeks later formed a co-partnership with Herman Foster, who is also mentioned in these memoirs. His association with these two leaders of the Man-



ISAAC W. SMITH.

chester bar gained him an acquaintance which, with his native ability and legal knowledge, early brought him a lucrative practice which constantly increased as long as he remained active in the profession.

His prominence at the bar and his kindly consideration for all soon brought him political honors. First he was president of the common council; then city solicitor; police court justice; representative in the lower house of the New Hampshire legislature; State senator; appointed by President Lincoln assessor of internal revenue in his district, and in 1869

was elected mayor. Each of these offices he filled with great satisfaction to his constituents. In 1877 he was appointed a justice of the Supreme Court to fill a vacancy. In politics Judge Smith was a republican. From 1881 to 1883 Judge Smith was president of the alumni association of Dartmouth college, also president of the Phi Beta Kappa society from 1882 to 1884, and in 1885 was elected a trustee of his *alma mater*. He was a lover of history and travel, and a man with a large fund of contemporary information.

On the 16th of August, 1854, Judge Smith was united in marriage to Amanda W., daughter of Hiram Brown, of Manchester, and they were the parents of eight children.

JEREMIAH SMITH, son of William Smith, was born in Peterborough, New Hampshire, November 11, 1759. His mother was the daughter of John Morrison. William, the father, was probably the best educated of the early settlers in that region, was a delegate to the provincial congress in 1774 and was the father of seven of the most uncommon sons the Granite State has yet produced. For sixty years the Smith family did more to advance the interests of their native town than any other family in that region. Of these seven brothers, Jeremiah achieved the most prominence. In his day the most common books were hard to get and the schools were wretched. It is related that he often walked three or four miles and back to borrow the most ordinary book. This effort showed his enthusiastic love of study and knowledge.

At the age of twelve years he began the study of Latin with Master Radolphus Greene; later he continued his studies under a Mr. Donavan, at New Boston; then he took up Greek under the guidance of a clergyman at Hollis. "Jerry," as he was familiarly known, matriculated at Harvard in 1777, left in 1779 to enter Rutgers, by which institution he was graduated in 1781. While at college he enlisted in the Continental army, was wounded



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at the battle of Bennington and after the healing of his wound, returned to college. During the years 1782 and 1783 he studied law in Barnstable, Massachusetts, then taught school one year at Andover and two years at Salem, during this period continuing his law reading. He was admitted to practice at Dover, New Hampshire, and opened his first office in Peterborough.

Jeremiah Smith's family reputation was enough to give the young lawyer an exceptionally good start, but his scholarly attainments, cultivated tastes and urbane manners did more and he soon was a recognized leader throughout the State. As a delegate to the State constitutional convention, 1791 and 1792, he took an active part in preventing the insertion of a clause to forbid those not Protestants holding the offices of senator and representative. In 1791 he was elected to congress as a federalist and continued in the office until 1797, when he resigned. He loyally supported Washington during these congressional terms and in 1798 was appointed United States district attorney, serving two years; in 1801-1802, by appointment of President Adams, he was judge of the United States Circuit Court for the New Hampshire district, when he resigned to accept the chief justiceship of his State's Supreme Court, continuing in that responsible office until 1809 and resigning to become governor. After his term as chief magistrate of New Hampshire, he resumed private practice until 1813, when he was again called to the chief justiceship of New Hampshire's highest court. Upon completing three years of service he withdrew from judicial life and never afterward held a political position.

When Judge Smith came to the bar, the law was in a very crude condition and no one did more to elevate and improve it; he was really the father of several important forms of practice, and it has been truly said that his acts form an essential part of his State's history during his public life. As a national character he was a friend of Washington, John

Adams, Jefferson, Madison, John Jay, John Marshall, Samuel Dexter, Fisher Ames, and the other prominent Americans of the French Revolution period, his actions always being in support of Washington. During his term as United States district attorney he moved to Exeter, where he lived until his death, September 21, 1812. In 1820 he gave up his private practice; for several years he was trustee and treasurer of Phillips Andover academy and from 1802 until his death was president of the Exeter bank. In 1804, the degree of LL.D. was conferred upon him by Dartmouth, and in 1807 by Harvard. In 1816 he published a "Sketch of Judge Caleb Ellis," and a very complete sketch of his own life was published in 1845 by John H. Morrison.

Judge Smith married first, Eliza Ross, of Prince George county, Maryland, and second, Elizabeth Hale, daughter of William Hale, of Dover, New Hampshire.

ISAAC N. BLODGETT, chief justice of the New Hampshire Supreme Court, was the son of Caleb and Charlotte (Piper) Blodgett. The father was born in Hudson, New Hampshire, 1793, and was descended as follows: Asabel, born in Hudson, 1756; Jeremiah, born in Hudson, 1721; Joseph, born in Chelmsford, Massachusetts, 1689; Thomas, born in Chelmsford, 1654; Daniel, born in England, 1631; Thomas, born in England, 1605, the latter coming to America on the ship *Increase* in 1635. Judge Blodgett's father, Caleb, was a prominent farmer and political leader. Among the offices he held were deputy sheriff, sheriff, eight years representative in the New Hampshire lower house, two years a member of the executive council; he was also at one time a candidate for governor.

Isaac N. Blodgett was educated by private tutors and at the Canaan, New Hampshire, Union academy; he read law first with William B. Weeks, of Canaan, and then with Anson S. Marshall, of Concord. In December, 1860, he was admitted to practice and im-

mediately opened an office in Canaan, where he remained until 1867, when he removed to Franklin and formed a co-partnership with Austin F. Pike, well known as a representative in the lower branch of congress. This partnership existed until 1880, when Mr. Blodgett was made an associate justice of the Supreme Court. In August, 1899, he was appointed chief justice, which position he still very acceptably fills. Judge Blodgett's other political positions have been, member of New Hampshire's lower house, 1871, 1873, 1874, 1878; State Senator, 1879, 1880; member

the parents of one child, Anne Geraldine, born August 13, 1862.



ISAAC N. BLODGETT.

State constitutional convention, 1876, 1889; chairman democratic State committee, 1876, 1877. For several years he has been president of the Franklin Savings bank; is trustee and chairman executive committee New Hampshire Orphan's home. The honorary degree of A. M. was conferred on him by Dartmouth in 1870 and in June, 1900, the same institution honored itself and him by conferring upon him the degree of LL. D.

On the 24th of May, 1861, Judge Blodgett was married to Sarah A., daughter of Moses and Cynthia L. Gerald, Canaan, and they are

CHARLES GORDON ATHERTON was born at Amherst, in Hillsborough county, New Hampshire, July 4, 1804. He graduated at Cambridge university in 1818, with unusual reputation for ability and scholarship at an early age. He studied law in the office of his distinguished father, Charles H. Atherton, was admitted to the bar at the age of twenty-one and established himself in business in the town of Dunstable (now Nashua), in his native county. In his profession his success was decided and his rise rapid. His mind, clear, logical and strong, with the ballast of excellent common sense, the adornments of a quick, fancy and a cultivated taste, was admirably adapted to the studies and the labors of the law. So far as was permitted by the interruptions of political life, he continued to the last in the active practice of his chosen profession. As a lawyer, it is not too much to say of him that he stood in the front rank of a bar which has always been fruitful of legal strength and acumen; his place was side by side with such compeers as Pierce, Woodbury, Parker, Bartlett and Bell—following, but not unworthily, in the path of those earlier "giants of the law," Webster, Mason and Jeremiah Smith.

In 1830 he commenced his public career as a representative from Nashua in the New Hampshire legislature, and continued in this office for a period of several years. He was speaker of the house of representatives for the last three of those years. In March, 1837, he was chosen one of the representatives of New Hampshire in the national congress, where he remained for three successive terms. At the expiration of that period he was transferred to the senate of the United States for the term of six years. He was also a member of the Baltimore convention which nominated General Pierce for the presidency. Mr. Atherton died November 15, 1853.

The Judiciary and the Bar of
New England

FOR THE

NINETEENTH CENTURY

BIOGRAPHICAL - RHODE ISLAND





THE JUDICIARY AND THE BAR OF NEW ENGLAND.

RHODE ISLAND.

SAMUEL AMES,* chief justice of the State of Rhode Island. A monument in Swan Point cemetery bears the following inscription:

SAMUEL AMES,

During nine years Chief Justice of the State of Rhode Island.

Born September 6th, 1806.

Died December 20th, 1865.

Upright, Fearless, Learned, Just, Sincere.

Rarely has an epitaph come so near telling the truth, the whole truth, and nothing but the truth.

When a man of mark dies, especially if he be stricken down suddenly in early life or in middle age, there is very apt to be a burst of eulogy which does him injustice by hiding his real merit. This was easily observed in the case of the man of whom we often and justly speak as the Great Chief Justice.

I was absent from the State when he died, and as I read in the newspapers what was said about him, I thought that the future historian from these materials would hardly be able to distinguish between this man and any other great lawyer and judge. And yet he was a man who, if truly described, would present a grand historical figure. "Paint me as I am,"

said Cromwell to the artist, "if you leave out a scar or a wrinkle, I will not pay you a shilling." Such directions would Samuel Ames have given to any one who should attempt to speak of him after his death. If his statue were set up at the public expense or by private subscription in the scene of his labors as counselor and judge, it would give the world assurance of a man. Everything about him was positive and strong.

His consciousness of his own great powers made him frequently impatient in dealing with men of less capacity. His own sense of honor kindled his wrath against meanness in every form. His sense of justice filled him with anger, both durable and vehement, against every form of injustice.

His intellect, powerful and rapid, could ill brook contact with men whose perceptions were dull. His great learning sometimes provoked contempt for men of more limited attainments. Of course such a man in the discharge of his duties would make enemies as well as friends.

I shall not attempt, of course, any biography of Mr. Ames, or any formal estimate of his abilities, his character, or his service to his native State. I confine myself to some things which remain in my memory of him.

I first saw him, a young man on Westmin-

* By Abraham Payson

ter street. His athletic figure, his elastic step, his careful dress, attracted my attention, and on inquiry I was told that he was first among the rising young lawyers of the State.

I next saw him in the old court room after the candles were lighted in the evening. Chief Justice Job Parlee and his associates, Hale and Staples, were on the bench. John Whipple, Richard Ward Green, General A. C. Green and Thomas F. Carpenter, were seated within the bar. Samuel Y. Atwell was addressing the court upon some motion, and probably with quite unnecessary eloquence. Mr. Ames sprang to his feet and stepping forward interrupted Mr. Atwell with: "May it please your honor, have we not heard enough of this rhodomontade?" I think I have heard this word used on no other occasion. I remember well the expression of Mr. Atwell as he turned and fixed his eyes upon his young friend, but he took no other notice of the interruption.

I next saw Mr. Ames at the boarding house of Mary Ann Smith. Among his fellow boarders were Samuel Curry, Charles S. Bradley, John Oldfield, Edward H. Hazard, and myself. While waiting in the ante-room for Mary Ann to announce that our meals were ready, it was our delight to listen to Mr. Ames. His talk took a wild range over subjects grave and gay. He was equally at home on questions of literature, law, and theology, and in his lighter moods, whether in sarcastic vein or more genial humor, he was irresistible.

He was then superintendent of the Sunday school at St. Stephen's church, and as he started of a Sunday morning, in his heavy lion skin overcoat, with his Bible under his arm, for his duties at the school, he reminded me of those churchmen of the middle age, who, though unmindful of the duties to which they were specially consecrated, were yet more at home when entrusted with the command of armies.

In 1846 I was associated with Mr. Ames as his junior partner, and had daily intercourse with him for five or six years, at the end of which time he opened for a while a law office

in Boston.

In 1856 he was elected to the office of chief justice, which office he held for nine years, and did not long survive his resignation, which was caused by his failing health. A more honorable man I have never known. A more learned lawyer I have neither known nor read about. A judge more anxious to do his whole duty never adorned any bench. No man had stronger or more tender affections.

Burke said of his friend, Lord Keppel: "Though it never showed itself in insult to any human being, Lord Keppel was somewhat high." I have often thought of this expression in connection with Mr. Ames. With his



SAMUEL AMES

peculiar temperament, it was difficult at times to be entirely just in the contest at the bar or when listening wearily on the bench to the endless tongues of lawyers. But no man had a kinder heart or felt more keen regret when he knew he had hurt the feelings of another man. On one occasion when I told him that an old member of the bar was hurt by something he had said, the tears came into his own eyes as he said: "Poor fellow: I am afraid he has reached the time when a grasshopper is a





burden," and immediately went to the man and made an ample apology. Once when he had lost his temper at the bar, I said to him: "I am sorry that you treated ——— in that manner." He replied, "I am sorry, too; but you see I could not help it." I hesitate to repeat anecdotes about Mr. Ames; there are still among the living so many men whose memory of him is as vivid as mine, and whose powers of analysis and description are much greater.

As I bring this notice to a close, I remember the last interview I had with him. For some time before he resigned the office of chief justice it was obvious to me as it was to all his friends, that his health was failing and it would be wise for him to rest from his judicial labors at least for a time. He was not fully conscious of his own infirmities, and he was very anxious to do his whole duty. Some of the toadies who always hover around a great man, told him that some of his friends thought that he ought to suspend his labors, and this produced a coolness between him and some of these friends, including myself. One morning when I entered the court room he came down from the bench and taking me into the jury room said: "Payne, I am going to resign this office." I replied, "I am very glad to hear it; if you will give yourself absolute rest for a year, I think you will be restored to health." He then requested my services in a little matter of business, the old friendly relations were restored, we shook hands, and I never saw him again.

During all the years which have passed since his death, there have not been many days when I have not recalled many pleasant memories of my long intimacy with Mr. Ames; and it gives me pleasure to think that if he knows anything of me now, he knows that from first to last I was an admirer of his ability and his character and also was one of his faithful friends.

I must allude to one incident which is fresh in my recollection. Most of my readers will remember the Hazard and Ives controversy. I have no desire to disturb the ashes that have

gathered over it. In the course of it some charges were made against Mr. Ames, in his capacity as reporter of the decisions of the Supreme Court, which were under investigation before a committee of the general assembly. He was invited to appear before the committee by counsel, and had a long and full consultation as to his line of defense. At the hearing before the committee, before his counsel could rise, Mr. Ames arose and said: "Gentlemen, when my honor is called in question I cannot consent to entrust my defense to any other arm than my own." I am sure that all who listened to him for the next fifteen minutes felt that his defense was perfect.

It seemed to me at the time that every man in the room was dwarfed in the presence of the Great Chief Justice.

JOB DUFFEE, jurist, student, author and one of Rhode Island's foremost sons, was born in Tiverton, in that State, September 20, 1790, and died July 26, 1847, in the fifty-seventh year of his age. His father, of Rhode Island ancestry, was a soldier in the Revolution, engaged in the battle of Bunker Hill, afterwards studied law and became chief justice of the Court of Common Pleas. Judge Duffee's early life was spent in the family home near Tiverton heights, overlooking some of the finest portions of Narragansett bay. As a youth he was an eager and thoughtful reader and acquired a good preliminary education, fitting for college in Bristol, Rhode Island. He was graduated at Brown university with high honors in 1813, and among his classmates were many men who afterwards became prominent, including Zachariah Allen, LL. D., Rev. Romeo Elton, D. D., Rev. Joel Hawes, D. D., Rev. Enoch Pond, D. D., and Rev. Thomas Shepard, D. D.

He early developed rare poetic talent and the year following his graduation delivered a poem, "The Vision of Petrarch," before the United Brothers society of the university. Shortly after his graduation he delivered a

Fourth of July oration. Judge Durfee studied law under the direction of his father, with whom he continued after his admission to practice.

Very early in his career in entered political life and in 1816 was elected to the general assembly from his native town, holding this office by re-election four consecutive years and winning considerable distinction as a sound and ready debator. In 1820 he was elected a representative to the United States congress and served until 1825, gaining a national reputation for ability as a legislator. In 1826 he was returned to the general



JOHN DURFEE

assembly, and in October, 1827, was chosen speaker of the house, a position which he filled with grace and acceptance until May, 1829, when he refused a re-election to the assembly. In 1833 he was elected associate justice of the Rhode Island Supreme Court and in June, 1835, became chief justice. Through the trying period of the "Dorr" rebellion he administered the duties of this high office with honor to himself and credit to the State, holding the office until his death.

Judge Durfee was a prolific author, the first edition of his poem "What Cheer" was brought

out in 1832 and met an enthusiastic reception in England, winning golden opinions from the critics and even from John Foster in the famous "Eclectic Review." In January, 1836, he delivered before the Rhode Island Historical society two marked lectures on aboriginal history, and a year later before the Massachusetts Historical society a lecture on the "Idea of the Supernatural Among the Aborigines." His memorable charge on treason, printed and widely circulated, was delivered before the Grand jury during the excitement occasioned by the "Dorr" war. He delivered an eloquent oration on the "Progress of Ideas" before the Phi Beta Kappa Society of Brown university in 1843. His largest and most labored prose work, "Paniden," first appeared in 1846 under the pseudonym of Theopetes. The work was profoundly metaphysical and evinced the great intellectual power of the author; yet it failed to attract wide attention. The winter preceding his death he delivered an able address on the "Rhode Island Idea of Government." In all his writings his pure and solid character stands conspicuous and his life, so full of activity and usefulness, justly won a noble and enduring niche in Rhode Island history.

Judge Durfee married, in 1820, Judith Borden, daughter of Simon Borden and seven children were born to them; the oldest son, Thomas Durfee, ex-chief justice of the Supreme Court of the State of Rhode Island, now resides in Providence.

Judge Durfee requested that his tombstone should be engraved with the Rhode Island coat of arms and these words, "His trust was, and is, in God."

THOMAS DURFEE, Providence, Rhode Island, ex-chief justice of the Supreme Court, was born in Tiverton, Rhode Island, February 6, 1826. He was the eldest son of Job and Judith (Borden) Durfee. His early years were spent at the home of his parents and to some extent in the labor of the farm, his father being a great lover of farm and

country life. He attended the school of his district in the summer and received instruction at home in the winter, the school being distant. When fourteen years old he went to East Greenwich and began preparing for college, first under the tuition of the late Rev. James Richardson and later under that of the Rev. Nathan Williams. He entered Brown university in 1842 and graduated in 1846. His class was large for the time and had in it students who have since attained much distinction. Immediately after his graduation he commenced the study of law with Tillinghast and Bradley, but pursuing his studies for the first year and more at his home in Tiverton. He was admitted to the bar in October, 1848, and at once entered on the practice of his profession in the city of Providence, where he has since resided.

In October, 1849, he was appointed by the Supreme Court, reporter of the decisions, and held the office for four years. He then served on the Court of Magistrates of the city of Providence from 1854 to 1860, one year as assistant and five years as presiding magistrate. In 1863 he was one of the representatives of the city of Providence in the general assembly, and speaker of the house for that year. He was an active supporter of the government during the Civil war with both voice and pen, and in 1864 was one of the delegates from Rhode Island to the convention that nominated Abraham Lincoln for president for a second term, and was by appointment of his associates president of the delegation. In 1865 he was elected to the State senate, and in June of the same year was chosen an associate justice of the Supreme Court, and soon after took his seat as such. January 28, 1875, he was elected chief justice, to succeed Judge Brayton, who had retired, and took the oath of office February 6, 1875, his forty-ninth birthday. He retired from the bench March 4, 1891, after a service of more than nine years as associate, and more than sixteen years as chief justice. The court during his incumbency had a jurisdiction, original and appel-

late, covering nearly the whole range of judicial proceedings. Its published decisions for that period, extending inclusively from the eighth to the seventeenth volume of the Rhode Island Reports, show in part the importance and variety of the questions before it, and also the manner in which they were met and decided. It may be mentioned here as an example of the law of heredity, that Judge Durfee's grandfather, Thomas Durfee of Tiverton, was a lawyer and from 1820 to 1829 chief justice of the Court of Common Pleas for Newport county; and that his father, Job Durfee, also a lawyer, was assistant justice of the



THOMAS DURFEE.

Supreme Court from June, 1833, to June, 1835, and then chief justice until his death, July 20, 1847. Job Durfee's portrait in photogravure appears in this work.

Since his retirement Judge Durfee has held no public office. He has for many years been a member of the corporation of Brown university, first as trustee and chancellor, and later as fellow, and received from it, in 1875, the degree of LL.D. He now fills, and has for some years filled, the office of president of the Providence Public library. Judge Durfee has occasionally contributed to periodicals and newspapers and has written some things

which, having been separately published, may be separately mentioned. In 1856-57 he completed a work on the Law of Highways, commenced by the late Joseph K. Angell shortly before his death, published by Little & Brown in 1887. In 1872 he put forth a small volume of verse entitled "The Village Picnic and Other Poems." In December, 1877, he delivered the oration at the dedication on the Providence county court house, published by order of the State. In 1883 he prepared a paper entitled "Gleanings from the Judicial History of Rhode Island," published by Sidney Rider as No. 18 of his series of Rhode Island Historical tracts. In 1884 he published a pamphlet entitled "Some Thoughts on the Constitution of Rhode Island." It was devoted mainly to the question, whether it is competent for the general assembly of Rhode Island to call a convention for the amendment or revision of the constitution of the State, the amendments or revisions when prepared by it, to be submitted to the electors for adoption by a simple majority vote. The constitution contains a provision for its own amendment, prescribing the method to be followed in the most mandatory terms, and requiring the same, among other requirements, the approval of three-fifths of the electors voting. The contention of the pamphlet was that the general assembly has no authority to provide for an amendment in any other manner, and that revision, even when it takes the form of a so-called new constitution, is but a work of amendment.

On June 24, 1886, Judge Durfee delivered the oration at the celebration of the two hundred and fiftieth anniversary of the planting of Providence, published by the city and in other ways; and June 29, 1894, an oration at the dedication of the statue of Ebenezer Knight Dexter, published by the city of Providence.

Mr. Durfee was married, October 29, 1857, to Sarah J. Slater, a daughter of John Slater 2d, and has one son, Samuel Slater Durfee.

JOHN HENRY STINESS, chief justice of the Supreme Court of Rhode Island, was born in Providence, Rhode Island, August 9, 1840, and is a son of Philip Bessom and Mary (Marsh) Stiness. Judge Stiness is descended from sturdy English ancestors, the family name being originally *Staines*, (pronounced in two syllables), but in the evolution of the orthography of family names which is often found in New England, it became *Stiness* in America. His progenitors in this country settled in Marblehead, Massachusetts, and during the Revolutionary war the great-grandfather of this subject, Samuel Stiness, served in the famous regiment which was mainly recruited among the fishermen of Marblehead and vicinity, and was known by the appropriate title, "The Amphibious Regiment," and was commanded by Colonel—afterward Brigadier-General—John Glover. Judge Stiness's grandfather was a sea captain, and during the war of 1812 served as sailing master of the two-gun schooner *Growler*, attached to the squadron of Commodore Isaac Chauncey, on Lake Ontario; after the war he retired from the service and removed to Smithville, Rhode Island, where he died in 1816. Philip Bessom Stiness, father of the judge, was born in Marblehead. At the beginning of his business life he served as a clerk with the firm of which Samuel Slater, the founder of the cotton manufacturing industry in the United States, was a member. Later he engaged in calendering cotton goods at Woonsocket, and afterward became interested in the manufacture of gimlet-pointed screws under a patent granted to Cullen Whipple, he and Mr. Whipple being the founders of the business in Providence, in 1838, which resulted in the organization of the New England Screw company. Mr. Stiness died in 1878. His wife, the mother of Judge Stiness, was Mary Marsh, daughter of John and Lucy (Blake) Marsh, of Sutton, Massachusetts, and a sister of George W. Marsh, a former grand master of the Grand Lodge, F. & A. M., of Rhode Island.

John H. Stiness received his elementary

education in the Providence public schools and at the University Grammar school. He entered Brown university with the class of 1861, but at the close of his sophomore year he assumed the supervision of the Hopkins Grammar school at North Providence (now the Branch Avenue Grammar school), where he remained two years. The outbreak of the Civil war interrupted his educational career, as he was commissioned a second lieutenant in the second regiment, New York artillery, with which he served fifteen months, acting as adjutant and occasionally as judge advocate. He was not graduated from the university.



JOHN H. STINESS

but the degree of A. M. was conferred upon him in 1876, and that of LL. D. in 1893.

After his retirement from the army he studied law in the office of Thurston Ripley & Co., and was admitted to the Rhode Island bar on March 31, 1865, and in January, 1875, was admitted to practice in the United States Supreme Court. He served as representative in the general assembly from Providence in 1874-75, and on April 13, 1875, was elected a justice of the Supreme Court, and chief justice May 30, 1900.

On the bench, as in every other capacity in

which he has served the public, Judge Stiness has proved his intelligence and integrity as a man, and his ability and fitness for the exalted position he occupies. His fellows in the profession entertain for him the highest respect and have full confidence in his legal mind and judicial fairness.

Among the important decisions rendered by Judge Stiness was the notable one sustaining the validity of the trust deed given in behalf of their creditors by the A. & W. Sprague company. The Court of Errors of Connecticut had decided that the deed was invalid, and this decision had been followed by Judge Shipman in the United States Circuit Court. Judge Stiness's opinion, however, was sustained in the United States Supreme Court, where it was contested by General B. F. Butler in the case of Evan Randolph vs. the Quinbeck company, and the Court of Errors of Connecticut modified its opinion so as to hold the mortgage valid for the assenting creditors, which was the main point at issue.

Judge Stiness was one of the commissioners for the erection of the Providence county court house in 1876-77. In 1882 he was elected a trustee of the Providence Public library, and is a member of the library committee. He is president of the Rhode Island Historical society; (1896) the secretary of the standing committee of the diocese of Rhode Island; a fellow of Brown university (1897), and a member from Rhode Island of the conference of commissioners on uniform State laws. He was appointed by the governor a member of the commission of fifteen to revise the constitution of Rhode Island (1897). In politics he is a republican.

Judge Stiness was married on November 19, 1868, to Miss Maria E. Williams; they have two children, Flora Brown, wife of Henry C. Tilden, and Henry Williams Stiness.

GEORGE MOULTON CARPENTER* was the oldest son of George Moulton

* Prepared by Horatio Rogers

and Sarah Lewis (Walcott) Carpenter, and was born in Portsmouth, Rhode Island, April 22, 1844. He came of sturdy old New England stock, the paternal line having early settled at Rehoboth, in Plymouth Colony, where it was located for more than two hundred years. An emigrant ancestor, William Carpenter, of Wherewell (or Horwell), England, with his son William, his son's wife and four children, embarked at Southampton, on the ship *Bevis*, and arrived at Boston, in America, in 1638. The substantial worth and patriotic spirit characterizing the family are indicated by the positions occupied at various times by different members of it. William Carpenter was more than once elected a deputy during the seventeenth century. In the Revolutionary war, another ancestor, Thomas Carpenter, was a private on the Lexington Alarm Roll of a company which marched from Rehoboth on April 19, 1775, and subsequently he was colonel of a Bristol county regiment of Massachusetts militia, which served at times both in New York and Rhode Island as emergency required reinforcements there. Coming down to this century, Joseph Carpenter, the grandfather of the subject of this sketch, was a soldier in the war of 1812, and a pensioner for many years. The Walcott family, in the maternal line, was old and influential in New England, the branch from which our associate sprung, having lived in northern Rhode Island for several generations. His mother, who was the daughter of John Foster Walcott, of Pawtucket, was a woman of great sweetness as well as strength of character, and to her, doubtless, he was indebted for some of his most attractive and endearing qualities.

Judge Carpenter's father was a Methodist minister, and as the ministerial term of settlement in that denomination, half a century ago, was limited to two years at a time at any one church, the early youth of our associate was spent in itinerating about from place to place

in southern New England, the family residing for brief periods, after his birth, at Duxbury, North Attleboro, Norwich, New London, Taunton, Providence and New Bedford, until in 1857 it permanently located in the city of Providence, the paternal Carpenter then being settled over the Chestnut Street Methodist Episcopal church there, subsequently becoming presiding elder, and eventually retiring from active ministerial work and engaging in the business of insurance.

In the public schools of New Bedford and Providence and in Brown university, Judge Carpenter received his education, graduating from the latter institution in 1864, with the degree of A. B. While at the Providence High school, under the tuition of Mr. E. H. Magill, now the president of Swarthmore college, he became proficient in short hand reporting, an accomplishment he always kept up and which proved of great benefit to him.

Judge Carpenter was admitted to the Rhode Island bar in 1867, having studied law with James Tillinghast, of Providence, with whom he was associated in business during some of the earlier years of his legal practice. Subsequently he formed a law partnership with Walter B. Vincent, which continued until he was elected to the bench. Judge Carpenter always stood high at the bar, possessing solid attainments, and being well versed in equity and the more difficult branches of the profession, the estimate in which he was held finding expression in his appointment as a member of the commission to revise the public laws of the State, the revision made being known as that of 1882. Other than as a commissioner to revise the public laws of the State and as a member of the school committee of Providence for three years, he never held any public office until he was elected an associate justice of the Supreme Court of Rhode Island, April 20, 1882, which position he resigned January 1, 1885, to accept the appointment of judge of the United States District Court for the district of Rhode Island, tendered to him by President Arthur, and over this latter court

he continued to preside as long as he lived.

Judge Carpenter was active in procuring the appointment of the record commission of the city of Providence. He was deeply impressed with the conviction that the public weal required that action should not further be delayed in perpetuating the documentary possessions of the city, which were rapidly falling into decay, and in making them available for use both by printing so far as possible, and by preparing and arranging papers not embraced in bound volumes, to the end that they might be accessible in the largest degree for historical and other purposes. His own appointment

his time and attention by judicial duties, he rendered gratuitous service to the city of Providence, and his interest was unflinching and his zeal indefatigable in carrying on the work of the commission. The surviving commissioners recall with pleasure that during all their official relations with their deceased associate, though the questions to be decided were very numerous, the most perfect harmony always prevailed.

In addition to his judicial opinions, little from Judge Carpenter's pen has appeared in print, and the following is believed to be a complete list of his printed miscellaneous works: "Eulogy on Masonry," delivered at the laying of the corner stone of Free Masons' hall, Providence, June 7, 1884; three addresses read before the Rhode Island Historical society, viz.: "Washington, the Founder of the Nation," read April 30, 1889; "The Reform of the Civil Service Considered from the Party Standpoint," read March 25, 1890, and "Modern Historical Aims and Methods," read November 3, 1891, and lastly an address delivered February 22, 1895, before the Southern New Hampshire Bar association, entitled "The Cure of the Defective and Disorderly." He was a rapid and vigorous writer, content with a clear, direct expression, rather than aiming at mere rhetorical grace of diction.

Judge Carpenter never married, but his home life was by no means a cheerless or solitary one. He possessed the virtue of orderliness in an extraordinary degree. With him there was a place for everything, and everything had to be in its place. He always kept an index or catalogue of all his papers, so elaborate in its details that it was cumbersome and confusing to any one else, but so intelligible was 'it to him that with its aid he could lay his hands on any paper in his possession. This orderly quality with the love of detail developed by it, has been strikingly exhibited in connection with the work of this commission, for Judge Carpenter had prepared a general index of the first nine printed volumes of the early records, and which he proposed to continue as other



GEORGE M. CARPENTER.

upon the commission was unexpected and unsought; but as he, with others, had urged this work upon the attention of the City Council, not only from a practical, but also from a patriotic standpoint, and that the directing supervision should be entrusted to those who would be actuated by enthusiastic love for the cause, unalloyed by any selfish considerations of pecuniary gain, he did not feel at liberty to decline to act upon the principle he had advocated, when choice fell upon him as a fitting instrument to prosecute the undertaking.

For more than five years and until his death, notwithstanding the demand made upon

volumes should be issued, until the series should be finished, when the index would be printed as a fitting conclusion of the completed work. To such perfection had he carried it that he had even written an introduction for it.

One of the most conspicuous, as it was one of the most attractive traits in the character of our deceased associate, was his utter loyalty, his absolute fidelity, to his friends. To them he was a tower of strength. It was not always easy to penetrate the inner sanctuary of his sympathies but those permitted to do so had a valuable possession. He kept no ledger account with his friends, in which he compared with cold calculation the favors rendered with the favors received. His heart and hand were always open to them; and his tongue, his pen, and his purse, were unsparingly used for their benefit. Many a poor fellow, discouraged in the struggle for recognition, and out of step with fortune, has had his burden lightened and his gloom dispelled by the kind and judicious aid extended by Judge Carpenter. Surely, men of his stamp are too rare in any community.

The departed jurist had his limitations, doubtless, as we all have, but fortunate will that man be, of whom, when for him time shall have faded into eternity, his friends shall be able to recall as many attractive qualities and endearing traits as we rejoice to remember adorned the character of the one we here commemorate, and whose removal from earthly companionships has left a void in many hearts that cannot easily be filled.

PARDON E. TILLINGHAST, associate justice of the Supreme Court of Rhode Island, was born in West Greenwich, Rhode Island, December 10, 1836. He was the son of Rev. John and Susan (Avery) Tillinghast, his father being a direct descendant in the sixth generation of Elder Pardon Tillinghast, the founder and progenitor of the Tillinghast family in this country. Pardon the first came

to Providence from Beechy Head, Sussex, England, in 1642, and was a companion of Roger Williams, the founder of Providence.

The subject of this sketch was brought up on a farm and received his education in the public schools of his native town and those of Killingly, Connecticut, working on the farm meanwhile for about eight months of each year. Subsequently he attended Hall's High school at Moosup, Rhode Island State Normal school, and Potter and Hammond's Commercial college, and fitted himself for a teacher. He taught in the public schools of the State, first in district schools and afterwards in



PARDON E. TILLINGHAST

grammar schools in Valley Falls, Providence and Pawtucket, for about eight years, meeting with excellent success.

In 1862 he resigned his position as principal of the Grove street Grammar school, Pawtucket, where he was receiving a good salary, and enlisted as a private in the twelfth Rhode Island volunteers and went to the front, serving in the ninth army corps under General Burnside. He was soon promoted to be quartermaster-sergeant and subsequently was acting quartermaster for some time.

The regiment of which he was a member was in the terrible battle of Fredericksburg,

where it lost in killed and wounded upwards of two hundred men.

On his return from the war he studied law with Charles W. Thrasher and Thomas K. King, of Pawtucket, and was admitted to the bar in 1867. He soon acquired a good clientele and established a reputation for honesty, diligence and ability in his profession. In 1872 he was elected town solicitor of Pawtucket, which position he held until he was elected to the bench in 1881. He was frequently elected to the general assembly, was chairman of the joint select committee on the revision of the statutes in 1872, and chairman of the senate judiciary committee for four years. In 1877 Mr. Tillinghast was chairman of the joint committee appointed by the general assembly to receive President Hayes as the guest of the State, and made the address of welcome. He took an active interest in military affairs after the war and held various offices, including that of lieutenant of cavalry, adjutant of the Pawtucket light guards, colonel on the governor's staff, and judge advocate-general of the State with the rank of brigadier-general.

He was elected judge in 1881 and has been on the bench ever since; during the first ten years of his judicial career he served in the Court of Common Pleas, presiding over jury trials, after which he was promoted to the appellate division of the Supreme Court in which he is now serving. His published opinions may be mainly found in Rhode Island Reports, volumes 14 to 23 inclusive. In 1891 he received the honorary degree of Master of Arts from Brown university, and was also elected a corresponding member of the New York Medico-Legal society. Judge Tillinghast is a very diligent and painstaking official, a patient listener, polite and genial in his relations with the bar, and has happily disappointed those who opposed his election on the ground that he was narrow and bigoted on moral and religious questions; for while holding himself somewhat rigidly to the standard of life dictated by his conscience and his

early training, yet he never permits his conception of his individual duty to influence his judgment toward others. In short, while he has positive and well defined convictions of his own on all moral and religious as well as on political and social questions, yet he fully recognizes the right of others who may differ from him to hold to their convictions and opinions also. He is a member of the Pawtucket Business Men's association, the Tokalon club, and the Providence Bar association, and the G. A. R.

He has always been active in church and Sunday school work, being like his father, a Baptist, and for the past fifteen years has been president of the First Baptist society. He married Ellen F. Paine, November 13, 1867, by whom he has four children now living, viz.: Alice L., who married Ralph R. Clapp, manager of the Standard Amusement company, limited, of London, England, where they now reside; John A., now a practising lawyer in Providence; Angelina F. and Fred W., now a senior in Brown university.

The ancient motto on the coat of arms of the Tillinghast family is well illustrated in the judicial career of Judge Tillinghast. It is this: "Be just and fear not."

NATHAN WHITMAN LITTLEFIELD, attorney at law, Providence, Rhode Island, was born in East Bridgewater, Massachusetts, May 21, 1846, a son of Rufus Ames and Abigail Russell (Whitman) Littlefield. He is a direct descendant in the ninth generation from John Alden. On the maternal side he is a descendant of John Whitman, one of the first settlers of Weymouth, Massachusetts, and a connection of Judge Ezekiel Whitman, for many years chief justice of the State of Maine. Numerous members of the family have been prominent practitioners of law, particularly in southeastern Massachusetts. Mr. Littlefield was educated in the East Bridgewater High school, Bridgewater academy, Phillips Andover academy (1865), and Dartmouth college,

where he took the A. B. degree with the class of 1869. Soon after entrance he took the lead of his class and retained it until graduation; was selected as one of the speakers at the junior exhibition, having the Greek oration, and took a leading part in the debate at the senior exhibition. He was also prominent in college athletics, was class captain and for two years one of the instructors in gymnastics. It is related that when he came on the platform to deliver the valedictory of his class they arose in a body and saluted him, a remarkable evidence of popularity.

For five years after his graduation Mr. Lit-



NATHAN W. LITTLEFIELD.

tlefield was engaged in educational work; as sub-master of the Charleston High school, Boston; principal of the Newport High school; and superintendent of schools and principal of the high school at Westerly, Rhode Island. From the start, however, it was his purpose to enter the legal profession and after having accumulated enough funds to discharge his college debts and provide for the future, he began preparation for the bar, entering Boston University School of Law, where he was graduated LL. B. in 1876. He went directly to Providence and after his admission to the

Rhode Island courts began practice. Mr. Littlefield has been wholly engaged in civil business and largely in equity, probate and real estate law. He overturned the practice and general understanding of the law of descents in this State by his brilliant legal victory in the case of Sheppard vs. Taylor et al, a victory won against the opinions of many of the leading real estate and equity lawyers of the State. For ten years he was engaged in the litigation over the complicated titles of land taken by the city of Providence for the new addition to Roger Williams park and succeeded in obtaining for his clients over \$250,000. A large volume of other important and complicated litigation has fallen under his charge throughout his career. He was appointed standing master in chancery in 1891 and many cases were referred to him. When the new bankruptcy act went into effect he was appointed referee in bankruptcy for the district of Rhode Island and has held the office ever since.

In 1897 and 1898 Mr. Littlefield represented Pawtucket in the State senate, although he has never been an active partisan. In 1900 he was the democratic candidate for governor of the State. Since 1880 he has resided in Pawtucket, of which place he has been a public spirited citizen. Especially interested in the advancement of education, he has been for some time a member of the Pawtucket School board, of which he was elected chairman on a non-partisan basis when the board was two-thirds republican. He was one of the promoters of the Pawtucket Young Men's Christian association. He has traveled abroad extensively and has been often called upon for addresses upon literary and historical subjects.

Mr. Littlefield is a member of the University club; Rhode Island Historical society; Business Men's club of Pawtucket; and an honorary member of the old Bridgewater Historical association. He also holds membership in Union lodge, No. 10, F. & A. M. of Pawtucket, and Pawtucket chapter, R. A. M. He married August 13, 1873, Arletta B. Red-

moul, daughter of Enastus Redmond, of Ellsworth, Maine, and one son was born of this union: Nathan W. Littlefield, jr., a graduate of Brown university. December 1, 1886, he married Mary Wheaton Ellis, of Pawtucket, and of this union one son has been born: Alden L. Littlefield.

CHARLES EDMUND GORMAN, Providence, ex-United States district attorney for the district of Rhode Island, was born in Boston, Massachusetts, July 26, 1844, a son of Charles Gorman, a native of Ireland, and Sarah J. (Woodbury) Gorman, and a lineal descendant, through his mother, of John Woodbury, who was among the settlers of Cape Ann, and of Peter Woodbury, a sergeant in Captain Dodge's company at the battle of Lexington.

Mr. Gorman attended the public schools of Providence until about twelve years of age, having from the age of seven been a newsboy. After leaving school he was engaged in mercantile pursuits until he reached the age of eighteen years, when he became a student of law in the office of Richard Ward Greene, ex-chief justice of the Supreme Court of Rhode Island. At the age of twenty-one, December 12, 1865, he was admitted to practice, and has since built up an extensive and successful business, ranking among the prominent practitioners at the New England bar.

He has always been a democrat, and early in life began to agitate the question of the repeal of the property qualification for voters as required by the constitution of Rhode Island; to this measure he devoted much time and attention, persistently pursuing the same before the people and the legislature of the State, finally seeing his cherished purpose accomplished by an amendment to the constitution in 1887. For this service he received the approval of the citizens of Rhode Island regardless of party, and was tendered a banquet, on which occasion he was presented with a silver tea service as a token of their appreciation.

Also, during this period he was urging a revision of the constitution of the State, and when, in 1897, the legislature provided for the appointment of a commission for that purpose, he was named as one of the commissioners, and the draft of the constitution as reported by the commission is in many particulars the result of his thought and labor.

While closely wedded to his profession he has always been an active participant in political movements, and has been the candidate of his party for many of the public offices of his State, and has held a number of positions of



CHARLES E. GORMAN.

public trust. He was a member of the city council and the board of aldermen, of Providence, for many years, and in 1870, 1885 and 1887 was a member of the house of representatives, the latter year having served as speaker of the house, and during his other terms was a member of important committees. In 1885 he was the democratic candidate for mayor of Providence, and in 1892 he was nominated by his party for lieutenant-governor. In 1893 he was appointed United States attorney for the district of Rhode Island. In 1896 he received the degree of LL. D. from Georgetown university.

Mr. Gorman's name appears as counsel on the pages of the Rhode Island reports in a generous proportion of the cases there reported, among them many leading ones, involving intricate questions of the constitutional law, torts, wills, and in equity. He has given much time both as counsel and director to the various charitable organizations of Providence, and is professor of the law of domestic relations, and wills in the Rhode Island Law college.

Mr. Gorman was married July 8, 1874, to Miss Josephine C. Dietrich, of Maryland; they have two children living, Charles Woodbury and Clement Dietrich.

ROBERT WILLARD BURBANK, a prominent attorney of Providence, Rhode Island, is descended from old New England ancestry of sturdy type. His father was Samuel Burbank, a Maine lawyer, who was among the early adventurers in California



ROBERT W. BURBANK.

when the discovery of gold startled the civilized world, and went from there to the Hawaiian group, where he was a sugar planter for a time, and died in 1857. He mar-

ried Mary A. Morse, also of Maine, who died in 1880 in Providence. The son was born at Kauai, on the island of Koloa, one of the Hawaiian group, September 14, 1856, and while still a child was brought to Maine by his mother. He prepared for college at the Friends' Boarding school in Providence, entered Brown university, and was graduated with the class of 1878. Entering the office of Mowry & Comstock, in Providence, he pursued his law studies and was admitted to the bar November 29, 1880. He at once began practice and by his industry and ability soon acquired an excellent business. In 1888 he was appointed assistant attorney-general of Rhode Island, which office he held one year. In 1891 he was unanimously nominated for the office of attorney-general by the republican convention, was elected and re-elected to the same high office. He discharged the responsible duties of that position with fidelity and efficiency for three terms, 1891-1894. In the municipal election, November, 1895, he was elected alderman of the Second ward of Providence on the good government ticket, and held the office two years, to the entire satisfaction of the community.

Mr. Burbank was married April 12, 1883, to Martha Anna Taylor, and they have three children: Robert Taylor, Philip and Elizabeth Burlank.

EDWARD D. BASSETT, was born in Brooklyn, New York, August 14, 1852, a son of Isaac H. and Amy A. (Drown) Bassett. He is a lineal descendant of William Bassett, who settled in Plymouth colony in 1621, being an immigrant passenger on the ship "Fortune." He later removed to Bridgeport, where, with one Mitchell, he was among the first settlers. It is a curious coincidence that E. L. Mitchell, Mr. Bassett's partner for over a decade, is a direct descendant of this settler. Mr. Bassett's ancestors included the Bassett, Hodges, Drown and Arnold families, members of all of which were prominent in

Revolutionary and Colonial times. His paternal grandfather, Maasa Bassett, was a prominent citizen of Providence in his day, and his maternal grandfather, Caleb Brown, also a resident of Providence, was a colonel in the War of 1812 and prominent in military circles.

Mr. Bassett's father was a merchant in New York city and educated his son at the Brooklyn Collegiate and Polytechnic institute, Providence High school, and Brown university, from which institution he took the A. B. degree in 1873. As an undergraduate at Brown he was one of the editors of the "Brunonian" and a member of the class and

over the Joseph J. Cook estate. Early in his practice he had charge of the litigation over the Cove Foundry and Machine company of Providence.

In politics he is a republican, but has never been active in political work, and, with the exception of several years' service in the city council and as a member of the school board, has never held public office, devoting all of his time to an extensive practice. For over twenty years he has been a director of the Westminster bank.

Mr. Bassett is a member of the Providence Athletic association, Elmwood club, Providence Bar club and Providence Bar association. He married, in 1877, Mary A. Slade, daughter of Jonathan Slade, of Swansea, Massachusetts. Of this union are two children: Amy H., and Edward D. Bassett, jr. Second he married Anna H. Richmond, daughter of Henry P. Richmond, of Providence, November 3, 1886.



EDWARD D. BASSETT.

"varsity" crews. He began preparation for the law in the Providence office of that eminent practitioner and legislator, Samuel Curry, with whom he remained two years. In 1875 he was admitted and began practice with offices in the building numbered forty-nine Weybosset street, Providence, where he has ever since been located. Mr. Bassett's practice has been largely commercial and he ranks among the foremost corporation lawyers of the State. Among the many important cases in which he has been retained as counsel are the Aylesworth and Adams will cases, and the litigation

JOSEPH E. SPINK, judge of the Municipal Court of Providence, was born in North Kingstown, Rhode Island, on the 27th of July, 1842. His parents were Joseph and Mary A. (Spink) Spink, both natives of Rhode Island and both of English descent. The pioneer of the Spink family in America was Robert, who came to America about 1670 and settled in North Kingstown. He was a farmer, so also each of his children, and at the present time part of the land originally settled upon by Robert Spink, the emigrant, is in the possession of the Spink family. During the Colonial and Revolutionary wars the Spinks were represented in the army as drummer boys. Like his ancestors, Joseph, the father of our subject, was a farmer. He took great interest in public affairs, twice serving as State senator, once under the old charter and once under the new constitution; was president of the town council of North Kingstown several terms and was well and favorably known throughout the State. In politics Mr. Spink

was a democrat. He died in 1875, leaving a family of five children, all of whom are living, our subject being next to the youngest.

Joseph E. Spink was raised on his father's farm and gained his early and college preparatory education at the country schools and at preparatory school in Providence. He entered Brown university and was graduated therefrom in 1865, after which he immediately began the reading of law with James Tillinghast. In 1867 he was admitted to practice, when he commenced active professional work without forming any co-partnership. From the start Mr. Spink had a fair share of legal work, his thoroughness, tact and energy giving him a constantly increasing and lucrative business.

In 1868 and 1869 he was a representative in the general assembly; in 1874 was moderator for North Kingstown; in 1884 was elected judge of the Municipal Court, since which time he has held that office continuously, a period of about seventeen years, being elected each year without opposition, a fact which speaks for his ability, his knowledge of the law, and his fairness. Like his father, Judge Spink has always been interested in public questions and is a staunch democrat.

Judge Spink is a thirty-second degree Mason, has been master of his lodge and held other offices in the fraternity. In 1874 he was married to Miss Emma E. Hudson, and they are the parents of five living children, Mary, Alice G., Hope, Martha and Agatha.

WALTER B. VINCENT, who is now serving as president of the board of aldermen of the city of Providence, Rhode Island, is one of the leading practitioners of that State. He descends from English Non-conformists and his ancestor, William Vincent, settled in Rhode Island as early as 1660. Mr. Vincent's great-grandfather, also named William, was a surgeon in the Continental army. His father, Ezra Vincent, was a New York merchant, and his mother, Ann Maria Den-

ison, the daughter of Gilbert Denison, a prominent citizen of Mystic, Connecticut. Mr. Vincent was born at the home of his maternal grandparents in that village, August 6, 1845, and spent the first years of his life in Westerly, Rhode Island, where his parents resided. In 1850, after their death, he went to reside with his paternal relatives in Stonnington, Connecticut, where he attended the district school and later the high school in Westerly. At the age of fourteen he entered a private boarding school in Tarrytown, New York, and later the Peckskill Military academy at Peckskill, New York, from which he was graduated in



WALTER B. VINCENT.

1864. In the same year he began preparation for the legal profession, entering the office of Thurston & Ripley in Providence. In 1866 he was graduated from the Albany Law school and admitted to the bar of the State of New York. Subsequently he resumed his studies in the office of Thurston & Ripley and was admitted to the Rhode Island bar in March, 1867. Mr. Vincent has been a practitioner in Providence ever since that date, a period of nearly thirty-three years.

He was clerk of the Rhode Island senate for four years under the administration of Gov-

errors Padelford and Howard, and was subsequently a member of the house of representatives for three years from the city of Providence. He was judge advocate of the second brigade, Rhode Island militia, upon the staff of Gen. Frederick Miller for three years. Mr. Vincent has also been prominently connected with the Masonic fraternity; is a past commander of St. John's commandery of Knights Templar; and holds membership in the supreme council of the thirty-third degree. He has been elected for three successive years as a member of the board of aldermen from the first ward.

Other offices and positions, political and judicial, he has declined, preferring to devote himself to the practice of his profession. He has established a flourishing practice in the general law courts, making, in later years, a specialty of patent litigation, and the prosecution and defence of actions to recover damages caused by negligence. He ranks, as above stated, among the leaders of the bar of the State, his success having won for him an enviable reputation as a lawyer and advocate of marked ability. For several years he was associated in practice with the late Judge George M. Carpenter.

Mr. Vincent has always been a public spirited citizen and his services to the city have been many and various, and always useful and unremitting. As a member of the committee on pending suits his familiarity with the difficult questions there has been in a high degree beneficial to the municipality. His work upon other committees, regular and special, has been indefatigable, and gained for him the confidence and gratitude of his colleagues.

Mr. Vincent has a wide social connection and holds membership in the Providence Athletic association; Providence Central club; Congregational club; University club; and Squantum club. He is extremely fond of outdoor exercises and also of travel, and in recent years has toured Europe several summers.

Mr. Vincent married, December 16, 1869, Mary E. Wingate, daughter of David S. Win-

gate, of Charleston, South Carolina. Of this union is one daughter, Edith.

EUGENE FRANCIS WARNER was born in the town of Coventry, Rhode Island, October 9, 1853, son of John and Abby F. (Ladd) Warner. He was a lineal descendant in the seventh generation from John Warner, of Warwick, England, who came to Rhode Island with Roger Williams. This John Warner was one of the thirteen original proprietors and the first clerk of the town of



EUGENE F. WARNER.

Warwick, Rhode Island, as well as the first clerk of the general assembly. John Warner, father of Eugene F., was for many years superintendent of the Coventry company, manufacturers of cotton goods at Anthony, Rhode Island.

Eugene F. Warner was educated at Brown university and studied law in Providence in the office of James H. Parsons and Joseph E. Spink. He was admitted to the Rhode Island bar in 1877, and has since practiced his profession in Providence. Mr. Warner was a

member of the Rhode Island legislature in 1877. In 1878 he was elected clerk of the State senate; in 1880 he was made secretary of the republican State central committee, and in 1886 was chosen justice of the fourth district court of Rhode Island. He was a delegate to the republican national convention in 1888.

Mr. Warner was a thirty-second-degree Mason, president of the Kent club, and a member of other organizations. He was unmarried. Mr. Warner died June 30, 1900.

WALTER SNOW BURGESS, associate justice of the Supreme Court of the State of Rhode Island from 1868 to 1881, was born in Rochester, Plymouth county, Massachusetts, September 10, 1808, a son of Abraham and Rhoda (Cuswell) Burgess. Both his father and grandfather were natives of the same town and farmers. His uncle, Tristan Burgess, was professor of oratory and Belles-lettres in Brown university from 1815 to 1828 and became a distinguished member of congress, serving from 1825 to 1835. Judge Burgess was reared on his father's farm and attended the common schools of the neighborhood. At the age of seventeen he attended the academy at Sandwich, Massachusetts, under Professor Luther Lincoln, and in 1827 entered Brown university, at which institution he was graduated with honor in 1831. In the same year he became principal of Thaxter academy at Edgartown, Martha's Vineyard, Massachusetts, and taught about four years, meanwhile pursuing legal studies. In 1835 he was admitted to the practice of law in the courts of Rhode Island and soon attained prominence in his profession. In politics he was identified with the whig and republican parties and in the Dorr troubles he sympathized with the party of progress and reform, but held to the proper lines of law and order, taking but little part in the general commotion. In 1845 he was appointed United States

district attorney for Rhode Island under the administration of President Polk and held that responsible position four years. His services were various and efficient in both branches of the legislature of the State and he was elected attorney-general in 1851, and re-elected in 1852, 1853, 1854, and again in 1860, 1861, 1862 and 1863. In 1868 he was chosen associate justice of the Supreme Court of the State, which position he filled with honor until his resignation, June 1, 1881. The confidence reposed in him by the people of Rhode Island was not misplaced. His ambition was to do right, to uphold the laws and to serve the Commonwealth that delighted to honor him. He was endowed with that very desirable gift known as common sense, which has an intuitive perception of the relation of things, and which distinguishes between the true and the false. His temper, his tastes, his impartiality, his love of justice and truth, all conspired to make him a model judge. He died July 26, 1892.

Judge Burgess married, June 1, 1836, Eleanor, daughter of James Burrill, of Providence, and three children were born to them.

WILLIAM READ STAPLES served as chief justice of the Rhode Island Supreme Court for nearly two years and as associate justice of that court nineteen years (1835-54). He was also noted as an antiquarian and historian, and was one of the corporators of the Rhode Island Historical society; its first secretary and librarian and the author of the "Annals of Providence;" "Documentary History of the Destruction of the Gaspee;" and numerous legal treatises.

Judge Staples was a native of Providence, born October 10, 1798, the youngest son of Samuel and Ruth (Read) Staples. He received his preliminary education under the tutelage of Oliver Angell and in what has been recently known as the University Grammar school. In

1817 he was graduated from Brown university and took for the theme of his oration, "The Dangers of American Liberty." He began the study of law in Nathaniel Searle's office and was admitted to the Rhode Island bar September 21, 1819. In 1832 he was elected a member of the first common council under the new city organization, and also served two years as police justice. For nineteen years, as above stated, he served as associate justice of the Rhode Island Supreme Court and succeeded Richard Ward Greene as chief justice in 1854. In consequence of failing health he

found of historical study and antiquarian research. By vote of the general assembly he prepared a history of the State convention of 1790 for the adoption of the Federal constitution, a volume of nearly seven hundred pages, the compilation of which cost him no small amount of hard labor.

Judge Staples first married Rebecca M. Bower and two children were born of this union, both of whom died in early life. For his second wife he married, in October, 1826, Evelina Eaton and they reared a family of eleven children. Judge Staples died suddenly October 19, 1868, aged fifty years. The following tribute was paid to him by William Greene: "The career of Mr. Staples, in all that belongs to industrial power, truthful demonstration and manly decision of character, was a model for the adoption of any young man, who, eschewing the shams of life, would make the most of its realities; and who, most worthily fitting himself for its duties, would most certainly assure himself of its rewards."



WILLIAM R. STAPLES.

held this position only two years. His mind was judicial in its character; with perhaps none of the brilliancy belonging to the natural advocate, but he had excellent judgment, a habit of patient investigation, a strong sense of justice, and discharged most creditably those minor judicial duties to which he was often called. For nearly nineteen years (1856-1869) he held the office of secretary and treasurer of the Rhode Island Society for the Encouragement of Domestic Industry. Judge Staples took a special interest in everything connected with the history of his native State and was

SYLVESTER GARDINER SHEARMAN, who died in Providence, January 3, 1868, in the sixty-sixth year of his age, was for nearly a decade a justice of the Rhode Island Supreme Court. He was born in North Kingstown in 1802, and after completing his preparatory education began the study of law with A. C. Greene at East Greenwich. Shortly after his admission to the bar he commenced practice in Wickford. He rose rapidly in his profession and early gained recognition as an advocate of ability. In 1834 he was elected, after a severe contest, a "law and order" representative from his native town to the general assembly. The victory which he obtained was especially remarkable, as the town of North Kingstown had been a marked democratic stronghold and contained many voters who sympathized with the Dorr movement. In 1848, such was his popularity, that he was chosen speaker of the house. At the whig con-

vention in 1849 he received the nomination for representative to congress from his district; there being, however, two other candidates, B. F. Thurston of the democratic party and Lauriston Hall of the liberty party, there was no election. When the second trial was made Mr. Shearman withdrew his name as a candidate and Nathan F. Dixon was nominated in his place and elected. Our subject was elevated to the Supreme Court bench in May, 1855, W. R. Staples and Alfred Bosworth being chosen at the same time. After an honorable and faithful service of nearly ten years he resigned.

"Judge Shearman was a man of strong common sense, of plain and simple manners, of quaint and original humor and integrity that was never questioned. As a debater he was remarkable for his readiness, for his apt illustration and for a homely wit which often carried an audience upon which argument would fall with but half its effect." He gave to his client the best of his experience, the best of his vital energy. As a counsellor his advice was given only after much thought and deliberation. A product of New England soil, his ancestry made him a fearless lover of the truth, and with a frank, sympathetic, chivalrous nature, his heart went out to the wronged and oppressed. He never refused his services to a client because he lacked means; he was generous to a fault and would make almost any sacrifice to serve a friend. In 1855 Brown university conferred upon him the degree of master of arts. Two of his sons, both clergymen, were graduates of Brown; Rev. Sumner Upham Shearman of the class of 1861 and Rev. William Dennis Upham Shearman of the class of 1865.

CLARENCE A. ALDRICH, Providence, Rhode Island, was born at Killingly, Connecticut, August 9, 1852, a son of Amos and Abbie A. (Burgess) Aldrich. On both the paternal and maternal sides he descends from

old New England families, and is numbered among the collateral descendants of Roger Williams. His brother, Nelson W. Aldrich, is now senior United States senator from Rhode Island. With the exception of a few years in Connecticut, where he was born, Mr. Aldrich's parents were both life-long residents of this State.

Mr. Aldrich received his preliminary education in the public and private schools of his birthplace, and later attended the Lapham institute at North Scituate, Rhode Island, where he was graduated with the class of 1871. For



CLARENCE A. ALDRICH.

some four years he taught school and then began preparation for the legal profession in the offices of Benjamin N. and Simon-S. Lapham of Providence. He was admitted to the Rhode Island bar June 6, 1879. In September, 1879, he established the office at Forty-two Westminster street, Providence, where he has ever since been located. Mr. Aldrich has engaged in an active general practice and has appeared as counsel in many important cases, notably the "Aylesworth will case," in which he was retained as counsel by the successful contestants. He has a wide legal and social

acquaintance and is a member of numerous clubs. From 1887 to 1888 and again from 1889 to 1891 Mr. Aldrich served as assistant attorney-general of the State of Rhode Island, and in 1887 and 1888 was a member of the general assembly from Providence. He has frequently been honored by appointment to municipal and State commissions and is at present a member of the Rhode Island State board of bar examiners.

On January 23, 1887, Mr. Aldrich was married to Adeline M., daughter of Alexander Kennedy, of Scituate.

THOMAS ALLEN JENCKES, one of the most eminent lawyers the State of Rhode Island has produced, was born November 2, 1818, and died in Cumberland, November 4, 1875. He was the only child of Thomas Bowen and Abigail (Allen) Jenckes, and a lineal descendant of Joseph Jenckes of Hammersmith, England, who was induced by Governor Winthrop (the younger) to come to Lynn, Massachusetts, about 1642 as master mechanic "to establish the iron and steel works." He made the dies for the coinage of the "Pine Tree shillings;" was the first patentee of inventions in America, and the acknowledged head of the iron smelting and founding business, and the first builder of machinery in this country. His son, also named Joseph, practically founded the town of Pawtucket and made it the great iron workshop of the colonies.

In 1838 Mr. Jenckes was graduated at Brown university with honor and entered the profession of law, in which he soon gained prominent recognition. Patent law was his legal specialty, and he was employed during his practice in many of the most important cases litigated in this country. He occupied many important civil positions, and as a member of the general assembly of his State, was the controlling mind. At one time he made a remarkable speech in the case of *Hazard vs. Ives*, involving the right of the assembly to

revise the judgements of the court so far as to direct a new trial, and carried the assembly against its own previous action. It is regarded as one of the greatest forensic triumphs in the annals of the State. Mr. Jenckes was elected to congress in 1862, and served through the thirty-eighth, thirty-ninth, fortieth and forty-first congresses, rendering distinguished service at the head of the committee on patents, and on the judiciary committee. He won national fame in connection with civil service reform, the general bankrupt law, and the patent and copyright laws. He possessed great courage, both moral and intellectual, and his self-control under all circumstances was perfect. It is related by those most nearly connected with him in his profession, that he never lost his temper, nor allowed irritable words to escape his lips. Although often himself taunted, he was never known to indulge in detraction of others. He was one of Rhode Island's greatest lawyers and profoundest thinkers. He accomplished, in fifty-six years, what few men accomplished in four score. He was born for great affairs, but was cut off in the beginning of his fullest powers as a lawyer, a legislator, a statesman, a poet and a man of letters.

THOMAS ALLEN JENCKES, son of Thomas Allen and Mary Jane (Fuller) Jenckes, was born in Providence, Rhode Island, August 28, 1856. He was educated in the Providence English and Classical school, and at Brown university, where he took the A. B. degree with the class of 1877. In 1878 he entered Boston University Law school, and in December of the following year was admitted to the bar. He at once began a general civil practice in Providence and in 1880 formed a co-partnership with Charles A. Wilson, which still continues. In politics Mr. Jenckes has been a republican, and for two years represented Cumberland in the State senate, (1897-1898), serving on the judiciary committee. He was also appointed by Governor Dyer a member

ber of the committee organized to act in conjunction with the Massachusetts topographical and survey commission to define and mark out the boundary line between Rhode Island and Massachusetts. He is a member of the Hope and Providence Bar clubs, and is a resident of Cumberland, practicing in Providence.



THOMAS A. JENCKES.

Mr. Jenckes married, June 11, 1890, Henrietta Brownell, daughter, of Stephen Brownell of Providence. Two sons have been born of this union: Thomas Allen Jenckes, Jr., and Stephen Hunt Jenckes.

JOHAN POWER KNOWLES, judge of the District Court of the United States for the district of Rhode Island for upwards of a decade, was born in Providence, June 13, 1808, the youngest of five sons of Edward Knowles, 2d. He received the major portion of his preliminary education in one of the "free schools" of Providence, under the preceptorship of Rev. George Taft, and in July, 1819, was apprenticed to the printer's trade in Providence.

Before attaining his majority he engaged in the printing business in Providence with a

senior partner and continued in this line of work until December, 1830, when, in fulfillment of a purpose long cherished, but from year to year necessarily postponed, he withdrew from mechanical pursuits and commenced a course of study. In 1836 he took the A. B. degree at Brown university, and two years later the LL. B. degree at Harvard Law school. Judge Knowles was admitted to the Rhode Island bar in October, 1838, after six months' additional study in the office of General Thomas F. Carpenter.

Of his practice at the bar, ending in 1869, it is enough to say that it was always satisfactorily remunerative and extensive and that by appointment of the Supreme Court he was one of its standing masters in chancery from about 1845 onwards and the reporter of its decisions from January, 1855, to January, 1857, when the duty of appointing a reporter was given to the general assembly. Subsequently, however, 1865, he was reinstated as reporter by the assembly and served as such until his resignation, March 11, 1867. Previous to 1843, he was not an imitative member of the then so-called "Loco Foco" party, but thereafter ever disavowed affiliation with any party, and, although notoriously independent, was not infrequently put in nomination on party tickets, regular and irregular, and elected twice—1855 and 1866—a representative of the general assembly from Providence, and twice—1866 and 1867—city solicitor of the city of Providence, resigning before the close of his second term. Judge Knowles was kind and considerate of those with whom he had business relations; was especially attentive to the young lawyers, whom he always tried to help when they met conditions with which they were unfamiliar.

In October, 1869, he was appointed judge of the District Court of the United States for the district of Rhode Island and held the office by commission under date of that month, and subsequently, on nomination by the president and confirmation by the senate was appointed to the same office, his commission bearing date

of January 27, 1870; this position he occupied until March, 1881, when he resigned. Judge Knowles died August 3, 1887.

JOHN PITMAN, son of Rev. John and Rebecca (Cox) Pitman, was born in Providence, Rhode Island, February 23, 1785. His father, a clergyman of the Baptist denomination, was settled as minister in Warren and subsequently in Seekonk.

Judge Pitman was prepared for college under the tuition of Rev. William Williams of Wrentham, Massachusetts, and was a graduate of Brown university in the class of 1799, before he had completed his fifteenth year. He began at once the study of law in the office of David Howell and after two and a half years' study was ready to be admitted to the Rhode Island bar; but it was deemed best for him to continue his studies until he had reached a more mature age and he accordingly went to Poughkeepsie, New York, to enter the office of T. Bailey. In June, 1806, he was admitted to practice in the city of New York and soon after to practice in the other courts of that State. He then went to Kentucky, where it had been his intention to permanently locate, but changing his mind he, in 1808, returned to Providence and thence removed in 1812 to Salem, Massachusetts. Here for some four years he remained, having a large and successful practice. During the next four years, from 1816 to 1820, he resided in Portsmouth, New Hampshire. In the autumn of 1820 he once more returned to his native town and a few months after opening his office in Providence was appointed United States district attorney for Rhode Island. In August, 1824, he was appointed judge of the United States District Court and held this position with honor and credit during the remainder of his life.

Judge Pitman's relations to Providence and to different institutions having for their object the social and intellectual welfare of the community, were of the most intimate character.

He was president of the Rhode Island Society for the Encouragement of Domestic Industry for ten years and for eighteen years president of the corporation of the Providence Athenaeum. At different times he was a member of both branches of the corporation of Brown university, receiving from this institution, in 1842, the honorary degree of doctor of laws. He was an orator of power and ability and was not infrequently called upon to deliver addresses on civic and literary occasions.

Judge Pitman died suddenly November 17, 1863. He was a man of sterling qualities of character; not merely a man of absolute integrity, but of the highest moral tone, holding in abhorrence every professional or business act that fell below a high moral level. Some one has paid him the following tribute: "He was an upright judge, a wise counselor and a sincere Christian, and his name will long be cherished among the most honored citizens of his native State."

GEORGE ARNOLD BRAYTON, chief justice of the Superior Court of the State of Rhode Island, from 1868 to 1874, and associate justice from 1843 until 1868, was born at Appomung village, in Warwick, Rhode Island, August 4, 1803, a son of Charles and Rebecca (Havens) Brayton. His father was chosen town clerk of Warwick in 1804 and elected, and held the office continuously until his death in 1834; he was also elected an associate justice of the Supreme Court in 1814 and was re-elected five times, holding the office until his death.

Judge Brayton was educated in the common schools of his native town, Kent academy in East Greenwich and under the private tutelage of Benjamin F. Allen, a graduate of Brown university. He entered Brown university in 1820 and was graduated with high honors in 1824. He read law in the office of Albert C. Greene, afterward attorney-general and United States senator, and in 1825 entered

the then famous law school in Litchfield, Connecticut, where he remained until February, 1827. In that year he was admitted to the bar and began practice in his native town. Here he served as a member of the school committee, as representative to the general assembly and after his father's death succeeded to the office of town clerk. In 1841 he was a member of the landholders' convention and also of the second convention in 1842 during the "Dorr troubles." Being a firm adherent to law and order, he was chosen a member of the general assembly under the new constitution. In 1843, having previously declined the office of judge of the Court of Common Pleas, he accepted an election as associate justice of the Supreme Court and in 1868 was elected chief justice, filling this position with honor to the State and credit to himself until his retirement, due to ill health, in 1874. Judge Brayton had then completed a judicial service of thirty-one years and in his retirement the bar and State authorities paid him the highest honors in resolutions and his salary was continued until his death.

Judge Brayton's talents, attainments and character won for him the highest respect. He was modest and retiring, yet a bold man; one who had the courage of his convictions and a frank and manly manner of declaring them, which won the respect of even those opposed to him. He had keen perceptions and a power of penetrating into the hidden motives of others to a remarkable degree. He was a man of force, of energy, of tireless endurance, one not discouraged by difficulties or obstacles, but aroused by them to the fullest exercise of his intellectual powers. In 1870 Brown university conferred the honorary degree of LL. D. upon him.

He married, in November, 1831, Celia Greene Clarke, daughter of Ray Clarke of East Greenwich, and two daughters were born of their marriage. The last years of Judge Brayton's life were spent in the retirement of his home in East Greenwich, where he died April 21, 1880, in his seventy-seventh year.

WILLIAM G. ROELKER, State senator from Warwick, the son of Frederick and Catherine Ray (Greene) Roelker, was born in Cincinnati, Ohio, June 12, 1854. Frederick Roelker, the father, was born in Hanover, Germany, emigrated to America, and was naturalized in 1837. One of the ancestors of William G., on his mother's side, was governor of Rhode Island for several years during the Revolutionary period.

William G. Roelker's early and intermediate education was obtained at the classical schools in Cincinnati, Ohio, and in 1867 he went to Europe to pursue his studies. From 1867 to 1873 his time was divided between the Berlin and Geneva universities. Upon his return to America at the latter date, he entered Harvard Law school, from which he was graduated with the degree of LL. B. in 1875. After graduation he continued his preparatory law work in the offices of Browne and Van Slyck, Providence, and was admitted to the Rhode Island bar in 1876. Mr. Roelker's first law partner was Francis W. Miner, a distinguished member of the Rhode Island bar.

In 1877 Mr. Roelker was elected to the Rhode Island general assembly, where he served his constituents so satisfactorily that they elected him to the upper house in 1894 and in 1895. In 1892 he was a presidential elector on the republican ticket; also in the same year chairman of the Rhode Island delegation to the republican national convention. In 1894 he was strongly urged by his friends for the United States senatorship, but withdrew in favor of George Peabody Wetmore, who was elected, and in 1900 re-elected. Mr. Roelker is a member of the Rhode Island Bar association, Rhode Island Historical society, Sons of the American Revolution, also several social organizations.

On the 19th of October, 1880, Mr. Roelker was united in marriage to Ella, daughter of Thomas A. Jenckes, mention of whose career appears in these memoirs. Four children have been born of this union, two boys and two girls.

The Judiciary and the Bar of
New England

FOR THE

NINETEENTH CENTURY

BIOGRAPHICAL - VERMONT

THE JUDICIARY AND THE BAR OF NEW ENGLAND.

VERMONT.

JOHN SMITH, St. Albans, Vt., was born at Barre, Mass., August 12, 1789, the youngest of four sons of Deacon Samuel and Patience (Gregory) Smith. He was brought to St. Albans by his parents in 1800, where his father purchased land on the site of the village, the tract being situated upon both the north and south sides of the main street. Through some defect in the title he afterward lost his real estate. In the town of Barre he had been a prominent member of the church, and it was said that he owned the only painted house in the town at the time of his removal to St. Albans. His wife was of Scotch origin and was a descendant of Robert Ray McGregor, of Scotland.

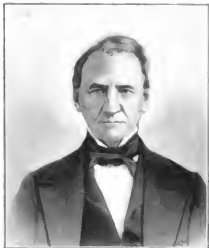
John Smith obtained his education in the district schools. He early decided to prepare himself for the legal profession, and to this end began the study of law with his brother-in-law, Russell Hutelins; however, his legal education was prosecuted mainly in the office of Hon. Benjamin Swift. He was admitted to the bar in August, 1810, and soon afterward formed a partnership with Judge Swift. This firm did a large and remunerative business and ranked second to none in ability and integrity. The association was continued until 1827, when, owing to Judge Swift's election to Congress, it was dissolved. After the dissolu-

tion Mr. Smith continued in practice until 1845, having various partners at different times.

In politics he was a Democrat, and was called upon to fill public positions of trust in the gift of the people. He was elected State's attorney for Franklin county in 1827 and held the office the six succeeding years. In 1827 he represented St. Albans in the General Assembly, and, with the exception of 1834, was re-elected every year to 1838, filling the office of speaker of the House in 1832 and 1833. In 1838 he was nominated by the Democratic party for Congress. The Whigs were strongly in the majority in his district, but the personal popularity of Mr. Smith was so great, that after three spirited trials he was elected. In the political overturning of 1840 Mr. Smith was defeated and his congressional career terminated on March 4, 1841.

Mr. Smith's greatest service to his State, and the real basis of his prominence, was through his connection with railroad matters, wherein he gave evidence of his comprehensive ability, his sturdy integrity and unflinching devotion to duty. Soon after his retirement from Congress the Legislature of Vermont granted charters to several railroads. In 1845, mainly through his efforts, a charter was obtained for the Vermont and Canada Railroad,

which gave the right to the company to build a line from some point on the Canada line through the village of St. Albans to connect with some point on the Vermont Central Railroad. The company's charter also carried the right to build a railroad from any point on their route to the western shore of Grand Isle county, passing across the Sand Bar to South Hero. This would enable them to make con-



JOHN SMITH.

nection with the Ogdenburg road, which would open a through traffic way with the great lakes and the western country. The proposed route crossing Lake Champlain proved not to be feasible, and the proposed terminus of the Ogdenburg road being Plattsburg, N. Y., parties at Burlington tried to have the project abandoned and the connection of the Ogdenburg and Vermont roads made at that point by ferry. This connection was of the most vital importance to the Vermont and Canada Railroad for the reason that the capitalists of the country refused to advance any further aid to the Vermont railroads only on condition that an unbroken line could be secured to the great lakes and the West. Mr. Smith proved equal to the emergency. He petitioned the Vermont Legislature to amend

the charter granted to the Vermont and Canada Company by erasing the words, "passing across the Sand Bar to South Hero." He carried this amendment successfully through the Legislature, and thereby secured to the railroad the right to build from any point on their route to any point on the western shore of Grand Isle county. The Ogdenburg road changed terminus to Rouse's Point, N. Y., and Mr. Smith having purchased the farm in Alburgh directly opposite, a wharf was built to the channel of the lake, and the connection was first made by ferry, and subsequently a bridge was built. Still the capitalists hesitated to advance the funds necessary to build the road. At this crisis Mr. Smith and two other gentlemen decided on a course as bold as it was ultimately successful. They proceeded to prosecute the work, becoming personally responsible for the cost of the same, and borrowed \$500,000 before a dollar was realized by subscription to the stock of the company.

Thus did John Smith, by his enterprise and foresight, take advantage of circumstances to inaugurate a course of measures that has greatly advanced the material wealth and interests of St. Albans. By his efforts in this undertaking St. Albans became eventually the home of the Vermont Central Railroad, and thereby the most prosperous and wealthy village in Northern Vermont.

Mr. Smith was noted for his liberality, public spirit, sagacity and untiring energy. He early made a profession of religion by uniting with the Congregational church, and continued to his death an active and influential member. Perplexing and exhausting labors had worn his physical system to near the breaking point, and he died suddenly on November 28, 1858.

Upon his memorial stone in the St. Albans cemetery is inscribed the following, after his name, date of birth and death: "His private virtues and the graces of a well ordered Christian life endeared him to his family and friends, and qualified him for the distinguished position which he occupied at the bar, and for the many

offices of public and political trusts which were bestowed upon him. This simply indicates the spot where the mortal remains repose of one who by his perseverance and energy in successfully establishing the Vermont and Canada Railroad gave to Franklin county and St. Albans a stimulus for the development of their agricultural and manufacturing resources."

Mr. Smith was married, September 18, 1814, to Miss Maria W. Curtis, of Troy, N. Y. They had the following children: Harriet, who married Benjamin B. Newton, and died at Plattsburgh, N. Y.; John Gregory, whose sketch follows this; Edward, who died at the age of three years; Worthington C.; Julia, who married George G. Hunt, and died at St. Albans; and Francis and Louisa (twins), of whom the former died in infancy and the latter married Lawrence Brainerd and died at St. Albans.

JOHN GREGORY SMITH, of St. Albans, governor of Vermont two terms, was born at St. Albans, July 22, 1818, the eldest son of John and Maria W. (Curtis) Smith. He received his elementary education in the district schools and the St. Albans Academy, and in 1834, at the age of sixteen years, entered the University of Vermont, from which institution he was graduated in 1838. He studied law in his father's office for a year and then entered the law department of Yale College, completing his studies in the spring of 1841, in the fall of which year he was admitted to the Franklin county bar.

Immediately after his admission he began practice in association with his father, under the firm name of J. & J. G. Smith, and until the time of his father's death in 1858, devoted himself industriously to his profession, serving a greater part of the period as counsel for the Vermont Central Railroad.

After the death of his father, who had been the paramount personality in the affairs of the Vermont and Canada and the Vermont Cen-

tral Railroads, John G. Smith was made one of a board of five trustees appointed to operate the roads, and from that time on relinquished the practice of law. To the exacting duties of this position he devoted his powerful energies, and being naturally endowed with unusual executive ability he finally brought order and system out of the tangle of litigation and cross-purposes, securing to the chief rail-



JOHN G. SMITH.

road interests of Vermont a secure basis. After the consolidation of the two interests under the present system, Governor Smith was its chief executive officer. He also filled the position of president of the Northern Pacific Railroad for several years.

In politics Governor Smith was always an earnest supporter of the principles of the Republican party and was recognized as one of the strong men in its ranks. The first political office to which he was chosen was that of State senator from Franklin county. In the Senate he gave proof of his broad intellect and active mind, serving his constituency faithfully and intelligently. From 1860 to 1862 inclusive he represented St. Albans in the Assembly, and was speaker of the House the last two terms.

It was at this period in the State's political history that men of sturdy integrity, intrepid action and patriotism above reproach advanced to the front; when the jugglery of politicians was brushed aside to make way for honest, vigorous administration of government and unflinching support of the beleaguered Union. Among such men, none possessed the confidence of the people to a greater extent than John G. Smith. Therefore it is not surprising that he was nominated and elected to the highest office in the gift of the people of his State—that of governor—in 1863, and re-elected in 1864.

His term of service was during the dark days of the Civil war, when the enthusiastic outburst of patriotism had subsided, and the reports of battle and carnage had brought the people of the North to a clear realization of terrible war, and well did he earn the title of "war governor." He saw that the depleted ranks of the Vermont regiments were filled, and neglected nothing in his aim to support the general government. He was the soldier's friend everywhere. Hundreds of letters were received by him from soldiers, asking for favors, and none was treated inconsiderately. He saw the Vermont men in the camp, on the field, in the hospital, wounded and dying, and ministered to their wants. For the sick and starved from Belle Island, returning to Annapolis as paroled prisoners, he personally interceded at the War Department and procured furloughs for them to go home, thus giving them tender care and relieving the government of their charge. In his honor the United States General Hospital at Brattleboro was named the Governor Smith General Hospital. And again was his patriotism and inflexible devotion to duty displayed, when Northern Vermont was subjected to a rebel raid from the Canada side, threatening bloodshed and rapine. The prompt measures set in motion by him were effective and won the warm appreciation of the people.

He retired from his second term of office with a record unimpaired, to take up the absorbing duties of president of the Vermont

Central and Northern Pacific Railroads. He declined appointment to the Senate, and also nomination for member of congress, largely in deference to the demands of those positions upon his time. He served as chairman of the Vermont delegation to the Republican National Conventions of 1872, 1880 and 1884.

Governor Smith's love for his native town was shown in many liberal gifts, the fountain which adorns the public park being only one of many illustrations. In business and social life he was eminently successful—a man of strict integrity, well meriting the high esteem accorded him by his fellow men. In private life he was pleasant and affable to all, courteous and kind, the beloved and revered head of a happy home.

Governor Smith was married to Miss Ann Eliza, daughter of Hon. Lawrence Brainerd. They were the parents of five children: George, Anna, Edward C. (whose sketch follows this), Julia (Mrs. O. C. Stevens), and Helen (Mrs. Rev. Donald C. McKay).

Governor Smith was in the enjoyment of excellent health until near the time of his death on November 6, 1891, just previous to which he caught a severe cold, which resulted fatally.

EDWARD CURTIS SMITH, governor of the State of Vermont, was born in St. Albans, in that State, on January 5, 1854, the second son of Hon. John Gregory and Anna Eliza (Brainerd) Smith, grandson of John and Maria W. (Curtis) Smith, and great-grandson of Samuel and Patience (Gregory) Smith, the latter a pioneer in St. Albans in 1800. Among his ancestors, it may be noted, there was a distinguished Colonial governor, a Revolutionary patriot, an abolition leader and United States senator, and a "war governor" of his native State. Biographies of his father and grandfather precede this, wherein are sketched their eminent services and worthy characters.

Governor Smith obtained his early education

at the St. Albans High School, and subsequently entered Yale College, where he was graduated in his twenty-first year. During his college course, apart from excellent standing in his studies, he was a prominent figure in athletic diversions, being a member of the freshman boat crew and of the "Varsity" baseball club.

After his graduation he read law in his father's office, was admitted to the bar, and in 1877 became the junior partner in the law firm of Noble & Smith. The firm secured an enviable practice and ranked with those of the best reputation. But his antecedents and environment were destined to draw him from the profession in which no one who knows him can doubt that he would have proved a successful man. The connection of his grandfather and father with the leading railroad interests of Vermont naturally appealed to him, and designated him as a worthy follower in the enterprises and labors in which his sire and grandsire had been conspicuous. In 1889 he was elected second vice-president of the Central Vermont Railroad and assumed the duties of general manager of the road. In this position he continued until the death of his father in 1891, when he was made president of the company.

Governor Smith displayed rare executive ability in the management of the Central Vermont system. He organized the Ogdensburg Transit Company, with a line of boats plying between Chicago and Ogdensburg, and became president of the company. He also organized the Ogdensburg Terminal Company, and originated and carried to a successful conclusion numerous enterprises for the development of the lake and rail lines. It was the settled policy of President Smith to operate the Central Vermont in the interest of Vermont and its people. The development of the material interests and natural resources of the State has been a dominating feature in his railroad management. In addition to his railroad interests he is or has been a director or officer in nearly

thirty different corporations, in all of which he has substantial interests.

Governor Smith always has been an uncompromising Republican, and while, owing to his multifarious duties, he has not taken an active part in politics, he has, nevertheless, kept in constant touch with the movements and measures of his party in the State. He cast his first presidential vote for Hayes in



EDWARD C. SMITH.

1876, and since has been connected with local Republican organizations. He frequently has been a delegate to State conventions, and in 1896 was delegate at large from Vermont to the Republican National Convention that nominated William McKinley. He has held a number of local offices, and in 1892 was appointed a member of Governor Plagge's staff, with the rank of colonel. The truest estimation of his popularity as a man was emphatically demonstrated at the election in 1890 when he received the unanimous vote of both the Republican and Democratic parties for representative from St. Albans in the Assembly. He was chairman of the ways and means committee of the House, and was entrusted with the important duty of formulating a new

corporation tax law, which met the approval of the people and increased the revenue of the State. In 1892 he declined the nomination for senator from Franklin county. In 1898 he was nominated and elected governor of Vermont by the Republicans.

Governor Smith was married on October 3, 1888, to Anna B., daughter of Hon. Henry R. James, of Ogdensburg, by whom he has four children, viz.: James Gregory, Edward Fairchild, Curtis Ripley and Anna Dorothea.

ALFRED ALLEN HALL, of St. Albans, Vt., one of the most widely known and influential men of Vermont, was born of Revolutionary stock in Athens, Windham county, Vt., December 31, 1848. His education in the common schools of his birthplace was supplemented by an academic course at Leland and Gray Seminary, Townsend, Vt. He afterward fitted for college, but was prevented by circumstances from attending. He taught school several terms and then entered the office of Davis & Adams at St. Albans, in September, 1870, and studied law with them until he was admitted to the Franklin county bar at the April term, 1873. He was soon afterward admitted to the Supreme Court of Vermont and the Circuit Court of the United States. He remained in the employ of Davis & Adams, practicing law, from April, 1873, until January, 1874.

At this time Mr. Hall formed a partnership for the practice of his profession with William D. Wilson, which has ever since continued, covering a longer period of business association than that of any other law firm in the State, and attaining a standing that is a source of honor and financial success. As a lawyer Mr. Hall stands among the leaders of the State bar; he is an advocate of exceptional eloquence, and a counselor who is well fortified by wide and exhaustive reading, and a keen and logical mind. His arguments always command the respectful attention and

careful consideration of the Supreme bench, and he has throughout his professional career been more than ordinarily successful in the conduct of the important and complicated cases committed to his charge.

Colonel Hall has always been a working Republican and his fellow citizens have called him to fill a number of responsible trusts of a civic character. He is a popular political orator



ALFRED A. HALL.

and his services in this direction have been beneficial to his party. He has held the office of town grand juror and was moderator of the town of St. Albans twelve years. He was president of the Board of Trustees of the village of St. Albans in 1880 and 1881; chairman of the School Board three years; trustee and treasurer of the Free Library twenty years, and a trustee of the Franklin County Grammar School. He held the office of corporation counsel many years and was chosen the first city attorney for the city of St. Albans. He was state's attorney for Franklin county in 1882-84, and State senator for Franklin county, 1892-94, serving as president *pro tem.* of the Senate during the term. In these many and varied positions, some of them involving arduous labor, legal ability, and wise

judgment, Colonel Hall has never failed to meet the highest expectations of his friends and fellow citizens. In 1893 he was appointed by Gov. Levi K. Fuller, chairman of the Board of Commissioners to revise the laws of Vermont, which resulted in the Statutes of Vermont as now in use, a compilation and codification which has been warmly praised by the bench and bar. In 1895 he was appointed by Gov. Urban A. Woodbury, commissioner on uniformity of laws. He was chairman of the Republican State Convention in 1896, and in a wide range of stations of greater or less importance has always cheerfully given his time and talents toward the propagation of Republican doctrine in the service of his State and community.

Colonel Hall has found time during the busy years of his life to devote attention to military affairs, for which he has decided taste and fitness. He was a member of Co. D, First Regiment of Infantry in the Vermont National Guard (the former Ransom Guards), serving upon the non-commissioned and commissioned staff of the regiment, and was appointed colonel and aide-de-camp on the staff of Gov. Samuel E. Pingree in 1884. He served more than ten years in the State Militia and is now borne on the retired list with the rank of colonel, from which fact he derived the familiar title by which he is known. He was among the first to join the Vermont Society of the Sons of the American Revolution, being eligible thereto through the patriotic services of both his paternal and maternal ancestors in the great struggle for freedom.

Colonel Hall is eminent in the Masonic fraternity, his career in that ancient and honorable institution being well known throughout the country. He became a member of Blazing Star Lodge No. 23, at Townshend, Vt., in March, 1870. Upon his removal to St. Albans in 1871 he became a member of Franklin Lodge No. 4, in which he subsequently held the office of worshipful master. He early became prominent in the Grand Lodge of the State, and was for two years its grand master. In Feb-

ruary, 1871, he became a member of Champlain Chapter No. 1, R. A. M., in which body he has held the offices up to that of high priest. In 1879 he was elected grand high priest of the Grand Chapter, and re-elected in 1880. He received the degree of royal master and select master in Columbus Council, Royal and Select Masters, in St. Albans, in 1872, and from 1882 to 1887 was thrice illustrious master. In 1877 he received the order of the Red Cross and of Knight Templar and Knight of Malta in Lafayette Commandery and afterwards held the office of eminent commander and grand commander of the Grand Commandery of Vermont. He is also a prominent member of the other Masonic organizations, and was the first Mason in the State to hold the highest office in the three grand lodges. He has been delegate to numerous important Masonic gatherings in various parts of the country, in which he has been a conspicuous figure. He has attained the thirty-third degree in the A. A. S. R.

Colonel Hall was married on June 15, 1874, to Abbie L. Austin, daughter of John and Louisa Z. Austin. They have two sons—Harrie Vaughn Hall, born February 2, 1878, who served as sergeant in Co. B, First Vermont Volunteer Infantry in the Spanish-American war; and Le Roy Austin Hall, born August 10, 1887.

GEORGE E. LAWRENCE, Rutland, Vt.—Among the older families of New England stock, many of which antedate the Revolutionary war, is that of the Lawrences, many members of which have been conspicuous in civil and public life. Descended from this ancestry was Edwin Lawrence, of Weybridge, Vt., a man of high character, who married Harriet Yale, of Middlebury, Vt. They were the parents of the subject of this notice.

George E. Lawrence was born at Weybridge, Vt., on June 10, 1844. After properly preparing himself, he entered Middlebury College, from which he was graduated in the class of

1867. He then took a course in the Albany (N. Y.) Law School, graduating in 1868. Entering the law office of Governor Stewart, he was admitted to the bar of Addison county in 1868, and subsequently to the Supreme Court of the State. He began the practice of his profession at Rutland in 1870 and in 1874 formed a partnership with Colonel Joyce, which continued four years. Subsequently P. M. Meldon was



GEORGE E. LAWRENCE

associated in business with him for about four years previous to 1889, since which year he has had no partner. Judge Lawrence has attained a high position in the bar of Rutland county and is widely regarded as a wise and safe counselor, a man of the highest integrity, and an industrious and painstaking lawyer. These qualifications have brought him a large practice and given him a standing in the community that has led to his selection for several positions of responsibility. He held the office of State's attorney from December, 1878, to December, 1880, performing the duties of the office with zealous fidelity. He served four years as municipal judge, and declined the office for a longer period. Those offices came to him unsought, as, indeed, have whatever honors that have been bestowed upon him.

A staunch Republican in politics, Judge Lawrence was elected to the State Legislature from Rutland for the year 1894, and faithfully and ably served the interests of his constituents. Judge Lawrence is a member of the Masonic order and counts among his warmest friends many fellow members of the ancient craft. Courteous and dignified in personal demeanor, firm in friendship and noted for the soundness of his judgment, Judge Lawrence has won the confidence and esteem of all with whom he has had professional or social intercourse.

In October, 1876, Judge Lawrence was married to Kate C. Phalen; they have two children, Robert A., associated in business with his father, and Edwin W., a student at the University of Vermont.

TORREY E. WALES, of Burlington, Vt., was born in the town of Westford, Chittenden county, Vermont, June 20, 1820. He is descended from an old and honored New England family, members of which on both paternal and maternal sides, were patriots in the Revolutionary war. After receiving a thorough preparatory education he entered the University of Vermont and was graduated in the class of 1841. He then took up the study of law in the office of Ashuel Peck, in Burlington, and was admitted to the bar of Chittenden county in 1845. Opening an office in Burlington, he began a legal career that now extends over a period of fifty-five years, and which has been marked for its success and the honors that it has brought to him. In 1857 he formed a partnership with R. S. Taft, now chief judge of the Supreme Court, which continued harmoniously for twenty-one years. In 1882 the firm of Wales & Wales was formed by the admission of his son to a partnership.

Judge Wales rose rapidly in his profession, soon commanding the confidence of the community and a liberal share of the legal business of the county. He has always been an

industrious worker, depending for success largely upon thorough investigation and preparation of the cases that were placed in his hands when in active practice before the courts, and is distinguished for faithfulness and loyalty to his clients.

In 1862 Mr. Wales was chosen judge of probate for Chittenden county, and such was his popularity and his peculiar fitness for the of-

fice that he filled it for thirty-six years. A staunch Republican, Judge Wales has labored always for the advancement of the interests of the party, which has recognized his services by electing him to several offices of responsibility. He was elected state's attorney in 1854 and held the office three years. He represented Burlington in the State Legislature in 1868, 1869, 1876, and 1877, making for himself a clean and reputable record as legislator. He has many times served his party as delegate to State and county political conventions. The city of Burlington honored him with election to the mayoralty for two years, 1866 and 1867, and he acted in the same office in 1870 during the absence of the incumbent, Mayor D. C. Linsley. No man ever served his party and

the public at large with more fidelity than Judge Wales. During his long career as a lawyer and official in the several positions named, Judge Wales has maintained his reputation for spotless integrity, and in the ripeness of his years he fills a large place in the esteem of all good men.

On February 3, 1846, Judge Wales married Elizabeth C. Mason, who died in 1886. He subsequently married Mrs. Helen M. White, of Boston, who died in 1895. A son, George W. Wales, by the first wife died in 1890, leaving two children.

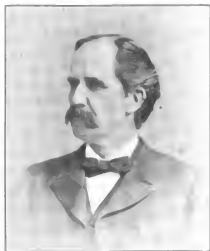


TORREY K. WALES.

JOEL C. BAKER, Rutland, Vt., was born in Dandey, Vt., April 16, 1838. He is a grandson of Stephen Baker, who removed from Rhode Island to Vermont in 1819, and son of Edin and Selucia Ann (Davenport) Baker. He was given opportunity to obtain an academical education, and after its completion he took up the study of law in the office of David A. Nicholson. He was admitted to the bar at Rutland in 1862, and to practice in the Supreme Court of the State in January, 1866.

Just before Mr. Baker's admission to the bar the fires of rebellion were lighted in the South and his patriotic spirit led him with hundreds of other Vermonters to enter the ranks of the Union army. He enlisted in Co. B, Ninth Vermont Volunteer Infantry, and was mustered into the service as sergeant. After about two months of active service in the Shenandoah Valley he was taken prisoner at Harper's Ferry on September 15, 1862. He was soon paroled and sent to Camp Douglas, and on January 9, 1863, was exchanged and served as guard over rebel prisoners. There he continued until April, 1863, when he was sent with others to City Point with a body of prisoners for exchange. He participated in the siege of Suffolk in the spring of 1863, and after the battle of Gettysburg, remained at Yorktown until October of that year. During the next eleven months he performed arduous service

in campaigning in North Carolina, and finally took part in the siege and capture of Petersburg and Richmond, being in the front on the skirmish line on the memorable 3d of April, 1865, which first entered Richmond. In December, 1863, he was promoted to second lieutenant; in the summer of 1864, was advanced to first lieutenant, and in the spring of 1865 received a captain's commission. Mr.



JOEL C. BAKER.

Baker's war record is an honorable one in every respect; he has always maintained his interest in military affairs in their relation to the old soldiers and is an active member of the G. A. R., and of the Loyal Legion.

Returning from the war Mr. Baker resumed law practice in Wallingford, Vt., from which place he removed and settled permanently in Rutland in 1868. As a lawyer he is considered a safe and judicious counselor, conscientiously devoted to the interests of his clients, and skillful in meeting legal opposition of whatever character. His practice is largely that of a trial lawyer in the State and Federal courts.

Mr. Baker is and always has been an earnest and active Republican and has been honored by his party with several public offices. He

was superintendent of schools in Rutland several years and has always labored unselfishly for the advancement of education. From 1893 to 1896 he held the office of city attorney, and was county auditor a number of years. From 1886 to 1888 he served in the State Senate with marked ability. He was appointed probate register for his district and deputy county clerk for the county and served in those offices from 1869 to 1873. His name has been frequently and prominently before the people as a candidate for the office of judge of the Supreme Court. He has almost yearly been a delegate to State and county political conventions, where his advice and efficiency have been influential in the party councils.

Mr. Baker was married on October 8, 1866, to Olive Adelaide Howe; they have one daughter.

BENJAMIN FRANKLIN FIFIELD, Montpelier, Vt., eldest son of Col. Orange Fifield, was born in Orange, Vt., November 18, 1832. The name of this family is derived from the union of the name of County Fife, Scotland, with the name, Field. His ancestors came in 1634 to Massachusetts and his later lineage in America is notable in many ways. On his mother's side he is connected with the Massachusetts Adamses. His great-grandfather Fifield was an officer in the Revolutionary army and the second man over the British entrenchments at Bennington. His grandfather's brother, Col. Edward Fifield, commanded a regiment in the war of 1812.

Benjamin F. Fifield fitted for college and was graduated from the University of Vermont in the class of 1855. At the close of his college course he entered the law office of Peck & Colby, at Montpelier, and in 1858 was admitted to the Washington county bar. Upon the removal of Mr. Colby from Vermont, Mr. Fifield formed a partnership with Mr. Peck, which continued until the death of the latter, when Mr. Fifield succeeded to the busi-

ness of the firm. In 1869 he became the counsel and confidential adviser of the Vermont Central Railroad Company, and of the receivers of that company, which relations he still continues. He was appointed United States attorney for the District of Vermont by President Grant in 1869, and received consecutive appointments until 1880, when he resigned on account of his election to the General Assembly from Montpelier. During this period his business was very large on account of the great number of violations of the pension, bankruptcy, internal revenue and customs laws. During his term of office the Fenian raiders were indicted, tried and convicted of violating the revenue laws. It has been quite generally conceded that he made the most efficient United States attorney ever appointed in this State.

In politics Mr. Fifield is a sturdy Republican and has generously aided his party. He is an eloquent and powerful speaker and has made his influence felt in many exciting campaigns. In August, 1880, he made a speech on political issues which was so vigorous and logical that 10,000 copies were printed and circulated during the campaign. In the State Legislature he was chairman of the judiciary committee, a position for which he was eminently fitted, and was a member of the committee on the revision of the laws and on constitutional amendments. In the thorough revision of the laws made at that time, he was a zealous and active worker. In the fall of 1882 a movement was made to put him in nomination for Congress, but he declined the proffered honor, preferring the pleasanter walks of his profession. In 1884 he was elected a delegate to the Republican National Convention, and in the same year became president of the Vermont Bar Association, upon which occasion he delivered an address in which he advocated making the tenure of office of the justices of the Supreme Court during good behaviour. In 1885 he was appointed a commissioner to locate the United States post-office and custom house in Montpelier. In 1889 he was appoint-

ed by the governor of Vermont, United States senator to fill the vacancy occasioned by the death of Senator Morrill, and declined the appointment on account of the permanent illness of his wife.

Mr. Fifield has been for thirty years the conspicuous legal figure in the long litigation of the Central Vermont Railroad Company and its system of roads. Out of the receivership



BENJAMIN F. FIFIELD.

of the Vermont Central, commencing in 1872, the issuance of various classes of bonds, and the floating of an enormous debt, many important and puzzling legal questions arose in respect to the priority of liens, and the relation of the Vermont and Canada road to the Vermont Central. The whole responsibility in continuous legal contests was placed upon him as leading counsel, which he most successfully conducted during this long period. In the litigation, every manner of expedient known to chancery law was resorted to, requiring a thorough knowledge of equity, constitutional law and chancery practice, in both the State and Federal courts. These were ably defended by Mr. Fifield and he was finally sustained by the courts on all of the substantial questions involved. He is to-day one of the foremost

lawyers of New England, and as a railroad and corporation attorney has few superiors anywhere.

Mr. Filfield was married in 1863 to Lucy Hubbard, of Montpelier, and they have three daughters.

OTIS N. KELTON, probate judge of Franklin county, Vt., was born in that county on April 3, 1844. He is descended from an old New England family, his father, Otis L. Kelton, having been born in Massachusetts. His mother was Sarah L. (Newcomb) Kelton.

Otis N. Kelton was educated in the public schools of his native town of Montgomery and in Brandon, Vt. He studied law in the office of J. S. Tupper, at Montgomery, and was admitted to the bar in September, 1877. Opening an office there he has continued in practice to the present time, excepting as he has been called from it by public duty.

Mr. Kelton is an earnest Republican and has given freely of his time and energy to his party in connection with local politics. His fellow citizens have honored him with several positions in public service. He was town clerk of the town of Montgomery from 1879 to 1899, a period of twenty years, and treasurer of the town from 1867 to 1899, a period of about thirty years. In 1874 he was elected to the State Legislature, serving in the lower branch in that and the following years. In 1882 he was elected to the State Senate for two years. He served in these bodies on important committees and gained a reputation as a safe, candid, able and honest legislator.

In 1892 Mr. Kelton was elected State's attorney for Franklin, and in the fall of 1898 was elected to the office he now holds, of probate judge. In these judicial positions Judge Kelton has maintained his reputation for integrity and fairness, while his thorough knowledge of the law has enabled him to perform his duties in an efficient manner from the professional

point of view. In his capacity as an active member of the Republican party, he has been sent as delegate to many conventions and meetings, where he has made his influence felt for the good of the organization throughout the State.

In 1898 Judge Kelton admitted to partnership with him in law business M. P. Maurice, a rising young attorney, who conducts the



OTIS N. KELTON.

business of the firm in the Montgomery office during the absence of the senior member in St. Albans.

On September 11, 1871, Judge Kelton was married to Hattie B. Clapp. They have four children—three daughters and one son. Her grandfather served as captain in the Revolutionary war, and was the first settler in the town of Montgomery, Franklin county, Vt. In October, 1899, Judge Kelton and family moved to St. Albans, Vt., where they now reside.

WILLIAM A. LORD, Montpelier, Vt., was born in that village August 28, 1849, son of William H. and Harriet A. (Aiken) Lord. His grandfather, Nathan Lord, was

president of Dartmouth College for nearly forty years. The family is an old and honored New England one. Mr. Lord received his education in the public schools and at Dartmouth College, from which institution he was graduated with the class of 1869. He removed to Cincinnati, Ohio, where he began the study of law, but returned to Montpelier and completed his legal education with Charles H. Heath.



WILLIAM A. LORD.

He was admitted to the bar in 1876, and immediately opened an office in his native place, where he has since continued the practice of his profession.

Mr. Lord has been connected with the public service almost throughout his professional career. He was reporter for the Senate from 1874 to 1876, and again in 1888. He represented Montpelier in the State Legislature in 1894 and 1896, and was speaker of the House in the latter year. He served as city attorney for Montpelier one term, and was appointed national bank examiner by the secretary of the treasury in March, 1898, in which position he is giving excellent satisfaction.

Mr. Lord was married to Mabel L. Newcomb, of Montpelier.

JOHN H. SENTER, Montpelier, Vt., was born in Calot, Vt., November 11, 1848. He was educated in the district schools and the High School in Concord, New Hampshire, fitting himself for teaching. Entering upon this vocation, he taught in all forty-three terms with marked success. His interest in educational affairs has never ceased and his efforts have resulted in great benefit to the school system of the State. During the latter part of his career as an instructor, he began studying law, and finished in the office of Clarence H. Pitkin, in Montpelier, where he was admitted to the bar in 1870. At a later date he was admitted to practice in the United States District Courts and the United States Circuit Court of Appeals.

Mr. Senter is widely known not only as an able and successful lawyer and teacher, but also as a broad-minded and active man of affairs, who has risen to prominence in public life wholly through his native ability and conscientious endeavor. He is a sound Democrat in politics, but although he has always resided in a State that is strongly Republican in every county, he has been honored with public office when his party ticket as a whole was far in the minority. He served as superintendent of schools in the town of Warren, Vt., ten years and the city of Montpelier. He has held the office of justice of the peace, and other municipal offices, and served on the Board of School Commissioners three years. He was a United States Circuit Court commissioner for many years, resigning when appointed United States attorney. In 1898 he was honored by election to the office of mayor of the city of Montpelier, and was re-elected in 1899 against vigorous opposition. He has given the city an excellent administration, and has been noted for his watchful oversight of every municipal problem that has arisen since he took the mayor's chair. He was for many years secretary of the Union Mutual Fire Insurance Company, of Montpelier, and is now a director of that company.

Mr. Senter was appointed national bank ex-

aminer under President Cleveland's first administration, and in Cleveland's last administration received appointment as United States district attorney for the District of Vermont. In these offices he has brought to bear the same native qualities that have enabled him to achieve success in other fields.

Mr. Senter's political life has been one of constant activity and aggressiveness. He has

libraries in New England, containing over 10,000 volumes, and during the past years of his greatest activity, has never ceased to be a student, both in his profession and of municipal problems, educational advancement and politics.

Mr. Senter was married, November 1, 1875, to Addie G. Martin; they have five children—two sons and three daughters.



JOHN H. SENTER.

served as secretary and assistant secretary of the Democratic State Committee twenty-seven years and at the present time is chairman of the committee. He was chosen delegate at large to the National Convention at St. Louis in 1888. He is one of the jail commissioners in charge of the erection of the new county jail for Washington county. During his administration as mayor in 1899 he was successful in having annexed to the city of Montpelier a tract of land comprising 1,300 acres and 1,000 population, constituting the important suburb known as Berlin Side. His advocacy of the town school system for the State of Vermont was influential in its favor during many years before it was finally established by law in 1892. Mr. Senter has one of the largest and most complete private law

GEORGE W. WING, attorney of Montpelier, Vermont, was born in Plainfield, near Montpelier, October 22, 1843, and was prepared for college at Barre Academy, Vermont, and the Montpelier Grammar School. In 1862 he entered Dartmouth College and was graduated in the class of 1866. He then took up the study of law in his father's office and was admitted to practice in the county court in March, 1868, and subsequently to the Supreme Court and Circuit Court of the United States. He began the practice of law in 1873 and has attained high standing throughout the State as an attorney of ability and integrity.

Previous to his admission to the bar Mr. Wing had been clerk five years in the office of the state treasurer and deputy secretary of state, filling these positions efficiently. He has held many offices in all of which he has evinced natural and acquired qualifications of a high order. He represented Montpelier in the State Legislature in 1882; was postmaster at Montpelier from 1884 to 1888, receiving his appointment from President Arthur. He was president of the village of Montpelier three years and was the first mayor of the city in 1895. In politics Mr. Wing has always been an earnest and active Republican and his voice is always heard with interested attention in the councils of his party. He is a prominent Mason, a member of the Blue Lodge, Chapter, and Commandery, and is a 33d degree Scottish Rite Mason. He has held every office in Masonry, both in the York and the Scottish

Rite. He has been grand commander of the Grand Commandery, grand high priest of the Grand Chapter, grand master of the Grand Lodge, and grand patron of the Eastern Star. He is also a member of the Shrine at Montpelier. He has been trustee of Vermont State Hospital six years, and chairman of the board



GEORGE W. WING.

two years. He is president of the Kellogg-Hubbard Library and trustee of the State Library and at present secretary of the Vermont Bar Association.

Mr. Wing is descended from ancestry distinguished in the history of the country. His parents were Joseph Addison and Samantha Elizabeth (Webster) Wing. The original progenitor of the family came to America long before the Revolution, and in the old graveyard at New Bedford, Mass., lie many of the ancient family stock. December 1, 1869, Mr. Wing married Sarah F. Forbush, who died in March, 1871, leaving one child, Sarah F. Wing. October 1, 1882, he married Ida I. Jones, of Montpelier, Vt.

HIRAM AUGUSTUS HUSE was born at Randolph, Vt., January 17, 1843. In 1845 his father's family moved to Wisconsin and he resided there until 1868. The father was Hiram Sylvester Huse and his mother was Emily Morgan (Blodgett) Huse.

After taking a course in Willard Seminary, at Watertown, Wis., the young man taught school several terms in that State. In 1860 he returned to Randolph to fit himself for college by a course in the Orange Grammar School. He entered Dartmouth College in 1861, but at the end of a year he enlisted, on August 19, 1862, in the 12th Vermont Volunteers, served as a private soldier through the term of service of his regiment, and was honorably discharged at the close of the Gettysburg campaign, July 14, 1863. He then returned to college and was graduated in the class of 1865. In the years 1866 and 1867 he took a



HIRAM A. HUSE.

course in the Albany Law School and was graduated therefrom in 1867, in which year also he was admitted to the bar.

During the years 1871 and 1872 Mr. Huse was assistant principal under Prof. Edward Conant in the State Normal School of Randolph, Vt. In 1872 he settled in Montpelier

and began the practice of law. In 1883 he formed a partnership with Clarence H. Pitkin, which continued seven years. In October, 1890, the firm of Dillingham & Huse was formed which became Dillingham, Huse & Howland in 1892.

Mr. Huse was appointed State librarian in 1873 and still retains this office; he was member of assembly in 1878, and from 1882 to 1884 was state's attorney for Washington county.

Mr. Huse is a member of Aurora Lodge, F. & A. M.; of Brooks Post, G. A. R., of the Sons of the American Revolution, and of the Society of Colonial Wars of the State of Vermont.

On January 30, 1872, Mr. Huse married Harriet Olivia, daughter of Melzar and Emily Harriet (Smith) Woodbury. They have two children: Harriet Emily (Mrs. Carlos C. Bancroft) and Ray Woodbury Huse.

TIMOTHY PARKER REDFIELD, of Montpelier, Vt., a son of Dr. Peleg Redfield and Hannah (Parker) Redfield, and descended from an old and honorable New England family, was born at Coventry, Orleans county, Vt., November 3, 1812. He was given excellent opportunity for that period to obtain a liberal education and graduated from Dartmouth College with high honors in 1836. Having a brother, Isaac Fletcher Redfield, who was already a successful lawyer and destined to win honors at the bar and on the bench, it was natural that he also should turn to that profession for his field of endeavor, and he accordingly began study in his brother's office. He was admitted to the bar in 1838 and at once entered upon the practice of his profession, which he followed continuously and with marked success until 1870, when he was elected to the bench of the Supreme Court of Vermont. By repeated successive re-elections he continued to hold this high office until 1884, when ill health compelled him to decline a re-nomination. His death took place on March 27, 1888.

In the profession of the law and its actual practice Judge Redfield gained a high reputation for his thorough knowledge of legal principles, his industrious care in preparation of cases, and his readiness to meet emergencies and logical arguments for his clients. He had always been a diligent student, possessed strong common sense and sound judgment, while his integrity and loyalty were never questioned.



TIMOTHY P. REDFIELD.

These varied and valuable qualifications eminently fitted him for his distinguished career on the bench of the Supreme Court. It was written of him by one of his intimate friends, that "in the consideration of legal questions while on the bench he displayed keen perception, sound judgment and a fine judicial poise of mind. His opinions are able and will prove a lasting monument to his ability and learning." It has been stated that in cases tried before him and a jury, the latter frequently paid little attention to evidence, relying largely upon the judge's charge for the grounds of their verdict.

Judge Redfield was a Democrat and his election to the office which he honored in a State that is strongly Republican indicates his popularity with the people and the confidence

reposed in him. Genial and social among his associates, with a ready flow of conversation and the somewhat rare capacity to enter into the feelings, hopes and ambitions of others, he had a large circle of faithful friends.

Judge Redfield married in February, 1840, Helen W. Grammis. She is now a resident of Montpelier. Of their four children, only one survives—Mrs. J. F. Waterman.

STEPHEN ROYCE, LL.D., one of the distinguished citizens and eminent lawyers of Vermont, was born in Timmonth, Rutland county, Vt., August 12, 1787. His grandfather, Major Stephen Royce, settled in Timmonth in 1774, where he soon became prominent among the leading men of that time. His son Stephen moved to Berkshire, in Franklin county, and during many years represented that town in the Vermont General Assembly. His wife was a daughter of Hon. Ebenezer Marvin, who was a member of the first Council of Censors, which assembled in 1785; he was also chief judge of the County Courts for the counties of Rutland, Chittenden and Franklin.

Stephen Royce, son of the Stephen above mentioned, prepared for college at the Addison County Grammar School, then considered one of the best preparatory schools in the State. He entered Middlebury College in 1803 and graduated in 1807, in a class of only seven, but among whom were a number of men who afterwards became eminent. Soon after leaving college he entered the law office of Ebenezer Marvin, jr., his maternal uncle, and after pursuing the usual course of legal study was admitted to the bar of Franklin county. He first began practicing in East Berkshire, but a little later removed to Sheldon, where he was in successful business six years. Removing thence to St. Albans he was there in active practice until 1829, with the exception of the years 1826 and 1827, when he was one of the judges of the Supreme Court. In 1833 he left

St. Albans and again took up his residence in East Berkshire, where he passed the remainder of his life.

Judge Royce represented the town of Sheldon in the Vermont Legislature in 1815, 1816; he also was representative from St. Albans in 1822, 1823, and 1824, and was delegate from that town to the Constitutional Convention of 1822. During the years 1816 and 1817, while



STEPHEN ROYCE

residing in Sheldon, he served as state's attorney for the county of Franklin. In 1825 he was elected one of the associate judges of the Supreme Court of Vermont, and was re-elected in 1826; again he was elected in 1827, but declined to accept the office for personal and domestic reasons. Resuming his practice in St. Albans he continued it only a short time when he was again called upon to enter public life. In 1829 he was elected one of the judges of the Supreme Court and by repeated re-elections annually, most of which were unanimous, he was continued on the bench until 1852, giving him twenty-five years on the supreme bench of the State, a longer term than has been held by any other supreme judge in Vermont, except the Hon. Jonathan Ross, now senator. On the retirement of Judge Will-

iams on the bench in 1846, Judge Royce was unanimously elected chief justice, and was five times annually re-elected; in 1852 he declined a re-election, with the intention of passing the remainder of his days in retirement on his farm in East Berkshire. But in the same year (1852) he was appointed by the governor, chairman of the Board of Commissioners authorized by resolution of the Legislature to report such provisions and amendments in regard to pleadings and practice in the Vermont courts as in their judgment would be beneficial.

Soon after the passage of the famous Kansas-Nebraska bill in Congress the Whigs of Vermont met in convention at Rutland to nominate State officers, and at the same time to declare their political sentiments regarding that act. Judge Royce had always been a consistent Whig and received the nomination for governor of the State, while Oscar L. Shaffer was placed on the ticket for lieutenant-governor. The latter declined the nomination, as he was about to remove from the State, and Ryland Fletcher was put in the place; both of these men had been recently acting in sympathy with the Abolitionists. This fact and the tenor of the platform were conducive to the consolidation and firm union of the Whig and the anti-slavery, or Abolition elements; the convention has been properly called the first Republican convention in Vermont, as it was the inception of the Republican party in that State, and Stephen Royce was, therefore, the first Republican governor elected in the United States. The State Committee appointed by this convention called the next annual convention as a Republican convention.

At the annual election in that year Judge Royce was elected governor by about 11,000 majority, and was re-elected in 1855 by an equally decisive majority.

Judge Royce possessed fine literary tastes and was a clear and forcible writer. He made extensive research into local history and late in his life wrote a history of the town of Berkshire. The University of Vermont conferred upon him in 1837 the honorary degree of

Doctor of Laws. Judge Royce died on the 11th of November, 1868. The following extract is taken from a memoir written by one of his contemporaries on the supreme bench after his death, and shows his brother's estimate of his qualifications as a judge:

"Though shrinking modesty was one of the most noticeable of his personal qualities, early in professional life he came to be regarded as one of the most highly endowed and thoroughly accomplished jurists of his day, and his services were enlisted in association, or conflict, with the most mature and eminent lawyers of the State—as Aldis, and Swift, and Marsh, and Edmunds, and Prentiss, and Everett, and Bradley, and others of like grade in age and rank. In the twenty-five years of his service as judge, he impressed himself upon the professional and public judgment of the State as one of the ablest and most accomplished jurists that have given strength and good name to the judiciary of Vermont. Though his mildness of temper, and kindness of feeling, and delicate modesty, precluded the exercise of that effective energy and decisiveness which characterized some of his eminent contemporaries and successors, still, he held 'the wav'ring balance' of justice with a strong and even hand, and permitted only 'the law and the testimony' to bear upon his judicial administration. It is true that he was affected with a delicate sensitiveness as to the feelings of others, that rendered it painful to him to pronounce, in formal opinion and judgment, upon questions involving important pecuniary or personal interests; yet such opinion and judgment were formed, and held, and pronounced by him, without any mixture of misgiving, or tinge of bias, arising from considerations aside from 'the law and the testimony.'

"The quality and extent of his learning in the law, and the exquisite refinement of his mind and taste as a jurist, are most strikingly evinced in enduring example and illustration, in the opinions drawn up by him, and contained in the Vermont Reports from Vol. 1 to Vol. 24. On the whole, they are entitled to

be, as they are, in fact, regarded, as the most perfect specimens of judicial literature contained in our Reports; in one respect surpassing even the renowned opinions of Judge Prentiss, viz.: in the quality of a comprehensiveness that never transcended the scope of the case in hand, to partake of the character of *essays upon the subject*, as well as of an *opinion of the Court in the case*."

HOMER E. ROYCE, LL.D., many years a resident of St. Albans, Vermont, and chief justice of the Supreme Court of that State, was born in Berkshire, Vt., on June 14, 1819. From the age of eight years he was reared by his uncle, Stephen Royce, a sketch of whose life precedes this. In early life his means were scanty and his school days were not without arduous toil about his uncle's home. After attendance at the common schools he went one term to the St. Albans Academy, and one or two terms at Enosburgh. His ambition was sufficient to carry him through his studies without weakening his early determination to become a lawyer, for which purpose he entered the law office of Thomas Childs at Berkshire and was admitted to the bar about 1844. He formed a fortunate partnership with his preceptor, but Mr. Childs soon removed to New York, leaving all of his practice to the young man.

Mr. Royce rose rapidly and was soon prominent in public affairs. In 1846-7 he represented the town of Berkshire in the Vermont Legislature, was state's attorney in the same period and during the three years (1849-51) was a prominent member of the State Senate. He enjoyed the activities and honors of political life and in 1854 stumped the State in the interest of Congressman Alvah Sabin. In 1856 Judge Royce was elected to succeed Mr. Sabin and served with distinction two terms, during both on the committee on foreign affairs, of which Tom Corwin was chairman. He became intimate with such anti-slavery leaders as Owen

Lovejoy, Gahshut Grow, Joshua R. Giddings, and others, and took an active part in the exciting legislative proceedings that immediately preceded the beginning of the Civil War.

During the eight years succeeding his congressional service he retired to the old homestead, giving his time and attention to the care of the involved affairs of his venerable uncle. Coming now into possession of the es-



HOMER E. ROYCE.

tate, which has always remained in the family, he was elected to the State Senate in 1868, and upon his removal to St. Albans in 1870, was in the same year elected judge of the Supreme Court to succeed Hon. W. C. Wilson. From that time forward he was re-elected continuously until he succeeded to the chief justiceship in 1882, thirty years after his distinguished uncle had relinquished the same position, which position he continued to hold, by successive re-elections, until his voluntary retirement in 1890. In 1882 the University of Vermont conferred upon him the degree of Doctor of Laws.

Judge Royce always enjoyed a large measure of popularity among the members of the Vermont bar, by whom his legal attainments have been held in the highest esteem. His rare

intuition and accurate judgment of human motive and action under given circumstances, and his ability to separate the wheat from the chaff in a legal contest, combined to make him the ideal jurist. As chancellor he had the settling of varied and delicate suits arising out of the conflict over the Vermont and Canada and Vermont Railroads, a litigation involving much labor. In those cases his decisions in all of their important aspects were endorsed by the full bench.

Judge Royce married in 1851 the daughter of Charles Edmunds, and to them three children were born. Judge Royce died at his home in St. Albans, April 24, 1891.

HOMER CHARLES ROYCE, one of the rising young attorneys of the State of Vermont, a resident of St. Albans, was born in East Berkshire, February 16, 1864. He was



HOMER C. ROYCE.

educated in the schools of St. Albans, to which place his parents removed when he was six years old. He entered the University of Vermont, from which he was graduated in 1884 with the degree of A. B. His college course

was followed by a course in the Columbia College Law School, before and after which he studied in the law office of Noble & Smith, in St. Albans, and was admitted to the bar in October, 1887. Opening an office in the city of Vergennes, Vt., he remained there for a period, and then practiced two years in Middlebury, Vt. He settled in St. Albans soon after the death of his father, in 1891. In January, 1892, the firm of Hogan & Royce was formed and still continues.

Mr. Royce is a Republican and, though young in years, stands high among the rising men of the party. He served as president of the village of St. Albans in 1895 and 1896, and has also been an efficient member of the School Committee. As a lawyer Mr. Royce has attained a flattering degree of success and has a bright future before him. He comes from a distinguished family in the legal profession, his father, the late Judge Homer E. Royce, having been one of the brightest lights of the Vermont bench and bar. A great-uncle of his, also, Hon. Stephen Royce, was a noted judge in the highest court of the State and governor of the State.

Mr. Royce was married in 1888 to Christiana M. Burgess, daughter of Bishop Alexander Burgess, of the diocese of Quincy, Illinois. They have two children—a son and a daughter.

HENRY ADAMS BURT, eighth child of Augustus and Mary (Lafferty) Burt, was born in Sheldon, Franklin county, Vermont, February 10, 1828. He is a direct descendant (seventh generation) of Henry Burt, who came from England to America in 1635 and settled in Springfield, Mass., in 1640. He was a prominent man in his time, and among his descendants are numbered one president of the United States, senators and members of congress, soldiers of fame, judges and leaders in the professions and business world for nine generations.

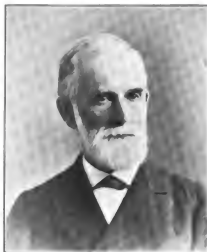
Henry A. Burt was educated in the public schools, at Bakersfield Academy, the Franklin County Grammar School, St. Albans, Vt., and graduated from the University of Vermont in 1849 with high honors, being a classmate of such men as Prof. M. K. Petty and William G. Shaw, of Burlington; Ex-Governor Farnham, of Bradford; Elnathan E. Higby, superintendent of public instruction of the State of Pennsylvania; J. Q. A. Fellows, of New Orleans; William W. Robertson, an eminent attorney in Montreal, Canada, and Rev. Edwin Wheelock, of Cambridge, Vt. After his graduation he was principal of the Franklin County Grammar School at St. Albans for two terms, and then resigned on account of ill health. His father was a prominent member of the Franklin county bar, and his brother, James S., although a young man, had won his way to the front by legal acumen, and was recognized as one of the brightest young lawyers in the State. The subject of this sketch read law in the office of his father and brother, and was admitted to the bar in Franklin county in December, 1852.

With a well disciplined mind, studious of habit, untiring in his work, he early took high rank in his chosen profession, and to-day stands among the first lawyers in the Green Mountain State.

He was state's attorney of Franklin county in 1860-1-2; was the legal adviser of the receivers of the Vermont Division of the Portland and Ogdensburg Railroad; attorney for the National Union Bank of Swanton, and has been identified with the more important litigation of his county for many years, still holding a large and lucrative practice in the State and Federal Courts. He has always been a staunch Republican, and has represented Swanton in the General Assembly, having been elected town representative three different times; and he was twice elected to the State Senate from Franklin county, and was recognized as an able and conservative legislator. In 1897 he was appointed commercial agent of the United States at Sanbridge, Quebec, and

held that position until he resigned in 1898. He has held various offices in the town of Swanton, and has always been identified with its business and commercial interests, its education, moral and religious welfare, and has long held the office of senior warden of Holy Trinity church.

In December, 1852, he married Olive Lyman, daughter of Daniel and Harriet (Hawley) Ly-



HENRY A. BURT.

man, of Jericho, Vt., and first settled in Fairfield, Vt., where he resided until 1856; since that time they have resided in Swanton, Vt. Mrs. Burt, though domestic in her tastes, was a woman of rare attainments, a devoted wife, a loving mother and valued friend. She died May 8, 1898, leaving two children grown to mature age: Henry Augustus, a lawyer by profession, associated with his father, and Ellen Cornelia, wife of Rev. Edward S. Stone. Another daughter, Mary Harriet, died December 27, 1886.

RUFUS EVERSON BROWN, Burlington, Vt., was born at Dickinson, Franklin county, N. Y., December 3, 1854. He received an academical education in the Lawrenceville

Academy in St. Lawrence county, N. Y., and the Amsterdam Academy, Amsterdam, N. Y., graduating from the latter institution in the class of 1876. He was thoroughly fitted for a teacher, a vocation for which he possessed rare natural attributes, and he engaged in that occupation for several years, but finally determined to take up the profession of law. He studied in the office of Wales & Taft, in Bur-

lington, Vt., and was admitted to the bar in 1880. He did not, however, engage in practice until 1891, unforeseen circumstances leading him to devote his attention to agricultural interests during the interval.



RUFUS E. BROWN.

lington, Vt., and was admitted to the bar in 1880. He did not, however, engage in practice until 1891, unforeseen circumstances leading him to devote his attention to agricultural interests during the interval.

In 1891 Mr. Brown opened an office in Burlington, and during the nine years of his active practice has rapidly advanced towards the front rank of Chittenden county lawyers. He is not only a good lawyer, but has found such popularity with the public and in the political field, that he has held office almost continuously since 1892. He is a Republican, but not of active partisanship, though he spoke in public throughout Chittenden county in the interest of the party. In 1892 he was made a grand juror and in 1894 was elected State's attorney. The duties of this office he

performed with such acceptance that he was re-elected in 1896, and again in 1898. In his legal methods Mr. Brown is a safe and able counselor, gives careful attention to the preparation of his cases, and makes an agreeable and effective appearance before court and jury.

Mr. Brown was married September 2, 1877, to Della F. Wood; they have one son, Ralph E. Brown.

WILLIAM HENRY BLISS, Middlebury, Vt., was born October 5, 1847, at Royalton, Vt. His father was Charles William Bliss, who passed most of his life as a farmer, but was a teacher in the South for some time. He was a man of good character and abilities and served in several town offices. He was born on the family homestead and there died January 1, 1898. He was father of three children; the eldest son died in 1888, and another son, Daniel W., is living on the old home farm. The grandfather of the subject of this sketch was John Bliss, a native of Rehoboth, Mass., but early in his life settled in Royalton, and married a daughter of John Hutchinson, who was taken prisoner in October in 1780, at the burning of Royalton, and held about a year.

Mr. William Henry Bliss received his preparatory education in the Royalton Academy, entered Vermont University and graduated therefrom in 1871. He studied law with Thomas C. Greene, a leading attorney of Providence, R. I., and was admitted to the bar of that State in October, 1873. He remained in practice in Providence three years, in association with Mr. Greene. He then removed to Rochester, Vt., and practiced until February, 1886, when he settled in Middlebury. Here he was in practice by himself to February, 1894, when he moved to Burlington for three years, most of this time in partnership with Hon. E. R. Hard, returning to Middlebury in June, 1897.

Mr. Bliss was always a Republican, with

somewhat independent views till 1896, when he took the independent side on financial issues and supported Bryan by his vote and on the platform. He has since voted with the Republican party. He was state's attorney of Addison county in 1890, and was admitted to



WILLIAM H. BLISS.

practice in the United States Supreme Court in October, 1895. He stands high among the most accomplished lawyers in the State. He has been law agent of Middlebury during most of the period of his residence in the village. By his genial disposition, his faithfulness to his obligations, his readiness to aid in every good work, and his nobility of character, Mr. Bliss has won the confidence and esteem of a large circle of friends. In September, 1899, he was appointed judge of the Court of Probate and Insolvency for the District of Addison, with his office in the court house at Middlebury.

Mr. Bliss was married September 9, 1874, to Maria J. Mitchell, daughter of Peter T. W. and Maria (Swan) Mitchell, of Providence. They have no children.

JOHN D. SPELLMAN, Rutland, Vt., attorney and politician, was born in Rutland, November 4, 1856. His education in the schools was limited on account of circumstances, but by persistent effort he succeeded in gaining an excellent education, and may be called a self-made man in every sense of the word. He taught school before he was eighteen years of age, and subsequently studied law in his native place with Hon. Charles H. Joyce, member of congress, First District of Vermont, and later with Redington & Butler. He was subsequently admitted to practice in the United States Supreme Court.

Opening a law office in Rutland, he has ever since conducted a successful business, excepting one year, when he held a position in the New York Custom House under President Cleveland during his first administration.



JOHN D. SPELLMAN.

Mr. Spellman is a man noted for his patriotism, a man with unlimited confidence in himself and one who clings to a purpose with a grit that is admirable. By his judicious political work and effectiveness as a public speaker he has received extended recognition among public men. He has been a Democrat, Republican, and an independent, always making

the point as he broke away from party and party leaders that "wise men sometimes change their minds but fools never do."

He was village attorney and grand juror for the village of Rutland for several terms before it was incorporated as a city; was the first prosecuting officer of the new city, and subsequently held commissions as special criminal prosecutor, having received the same from Governors Dillingham and Fuller. In every branch of his legal work he met all the requirements of the astute lawyer and was a recognized courageous prosecutor. In the local political field Mr. Spellman has attained prominence through his independence and his personal theories as to the management of municipal affairs. These theories he is able to present before the people with effective eloquence and convincing logic.

He was a delegate in the National Democratic Convention at Chicago in 1884. He has helped make and unmake many public men. He ran five times successively for mayor of the city of Rutland, being defeated in the first four battles by small margins each time, but the 6th day of March, 1900, he won the mayoralty fight on the Citizens' ticket over Walter A. Clark, Republican, and Richard Ryan, Democrat, and is now mayor of the city of Rutland. His fight covered a period of five years and is one of the most remarkable municipal fights in the history of New England. He was the recipient of several hundred letters of congratulation from leading citizens throughout the nation.

Mr. Spellman was married in October, 1884, to Elizabeth M. Gilrain, and they have two children—T. Joyce Spellman, born May 20, 1889, and J. Dyer Spellman, born October 8, 1891.

EDWARD DANA, Rutland, Vt.—The name of Dana is a common one throughout New England and members of the family have in many instances become famous in the various walks of life. The subject of this no-

tice is a son of Judah and Marsha (Holmes) Dana, and on the paternal side is a descendant of the patriot, Israel Putnam, whose daughter, Hannah Putnam, married a Dana who was a direct ancestor of Edward Dana. Edward Dana was born in Woodstock, Vt., May 6, 1852, and received his collegiate education at Middlebury College, from which he was graduated with honor. Adopting the law as a profession,



EDWARD DANA

he began study in the office of Duntun & Veazey, in Rutland, and was admitted to the bar in 1873. He began practice at once and soon progressed toward the front rank of the local bar. Unflinching and unflinching in his labor for the welfare of his clients, possessing a large store of legal knowledge, to which his studious habits rapidly added, and with a good command of logic, Mr. Dana's subsequent success has made him one of the ablest and safest counselors in the State. His practice has been extensive and varied in character, and marked with a degree of success that usually follows earnest effort and good ability.

Mr. Dana is an active and earnest Republican and takes a lively interest in the success of his party, which has in various ways honored him. He held the office of State's attor-





ney two years, 1888 to 1890, and served in the legislature as house reporter, or assistant clerk, in 1878, 1882, 1884, and 1886. His practice now extends to the charge of the legal affairs of various corporations and firms. He has been a trustee of the Rutland Savings bank since 1893.

In 1881 Mr. Dana married Harriette M. Dunton, and they have two daughters.

JACOB COLLAMER, Woodstock, Vt., assistant judge of the Supreme Court, circuit judge, member of congress, postmaster-general and United States senator, was born in Troy, N. Y., January 8, 1791, one of a family of three sons and five daughters. His father was of colonial English origin, his ancestors being among the earliest settlers of Massachusetts. His mother was of colonial Dutch descent. His father was a house carpenter. He moved from Troy to Burlington, Vt., when Jacob was about four years old, and there he spent the residue of his life. As Jacob advanced in boyhood his instinctive impulses, encouraged by the faculty of Vermont University, caused him to aspire to a place in those halls of learning, and he prepared for entrance under the instruction of some members of the faculty, at so early an age as to be admitted in 1806, at the age of about fifteen and a half years. He was the youngest member of his class save one, Hon. Norman Williams, who was about nine months the younger. The class, consisting of seventeen, was graduated in 1810.

Upon his graduation he began the study of law and pursued it in St. Albans, under Mr. Langworthy and Hon. Benjamin Swift, subsequently a senator from Vermont in Congress, and was admitted to the bar in 1813. In 1812 he was drafted into the detailed militia service, and served during the period of the draft as lieutenant of artillery in the frontier campaign.

On being admitted to the bar he visited Barre, in the hope of arranging a business

connection with Dennison Smith, then already established there as a young lawyer in successful practice. While there an incident occurred which he used to relate with a mirthful relish. Mr. Smith was to attend a trial in justice's court in a neighboring town; young Collamer accompanied him, to avail himself of the opportunity to make his first argument in the trial of a cause. It was in the winter season. He wore a long surtout. In riding to the court they got upset, and Collamer's trousers suffered such an unseemly rent that he was compelled to wear the surtout throughout the trial. In due time they left, and on getting to his quarters he betook himself to his bed, while his friend Smith got the unfortunate breach repaired. With such a debut he entered upon the career that bore him to the summit of professional and public honors.

Not making the proposed arrangement, he went to Randolph Center and opened an office, doing such professional work as he could get to do, and helping his income by collecting what was known as the United States "war tax." In 1814 he was able to General French and went forward with him and the forces under his command to join the army at Plattsburg, arriving, however, in the evening just after the battle was over.

Inducements presented themselves which led Mr. Collamer to remove to Royalton, Vt., in 1816, and there he remained till April, 1836, when he removed to Woodstock to reside during the remainder of his life.

In the early years of his professional life he held the office of register of probate. He four times represented Royalton in the Legislature in the years 1821-22, and 1827-28. He was state's attorney for the county of Windsor for the years 1822-24. At the commencement anniversary of his alma mater in 1828 he delivered the oration before the Phi Sigma Nu Society, which was printed by order of that fraternity. He was a member of the Constitutional Convention of January, 1836, which amended the constitution by creating the Senate as a branch of the Legislature. That

amendment has been ever largely attributed to the ability and zeal with which he urged it.

In 1833 he was elected one of the assistant judges of the Supreme Court. The bench was then filled by Williams, Chief Judge Royce, Phelps, Collamer and Mattocks. Judge Collamer remained at the bench till 1842, when he declined a re-election. On leaving the bench he opened an office and resumed the practice of the law in Woodstock, and did not entirely abandon it except while he was postmaster-general and circuit judge of Vermont,



JACOB COLLAMER.

though after 1848 he did not hold himself out for general business nor keep an open office.

In November, 1843, he was elected a representative in Congress. After three elections the judge declined a fourth, closing his membership of the lower house of Congress with the 3d day of March, 1849. He was then selected for postmaster-general in President Taylor's cabinet, and held the office until the death of the president in July, 1850. In 1849 he was the first of her graduates to be honored by his alma mater with the degree of Doctor of Laws. In 1855 he received the like honor from Dartmouth. On the breaking up of the

Taylor cabinet Judge Collamer returned home with his family, and by the Legislature that fall he was elected circuit judge, which office he held until he was elected senator in Congress in October, 1854, to which office he was again elected in October, 1860. He was wearing his senatorial robes with ever increasing dignity and grace, till, on the evening of the 9th of November, 1865, he

"Wrapped the drapery of his couch about him,
And lay down to pleasant dreams."

He died at his home in Woodstock.

But few citizens of Vermont have been called to so many positions of trust and honor as was Jacob Collamer, and few, indeed, have performed such duties with stricter fidelity, with more marked ability, or reflected greater honor upon the State than he did. Some of her public men may have shone with a greater brilliancy, but none with a steadier or more enduring light. As lawyer and judge in Vermont, as representative of the State in both houses of the national legislative body, he easily ranked among the foremost men of his time. In pursuance of an act of the Legislature of Vermont in 1872, a statue of Judge Collamer, executed by Preston Powers, son of Hiram Powers (a native of Windsor county, Vt.), was placed in the National Statuary Hall at Washington, D. C.; the only other citizen of Vermont having received a like honor from the State being General Ethan Allen.

On July 15, 1817, Judge Collamer was married at St. Albans to Miss Mary Stone, who died in Woodstock May 10, 1870. Their children were as follows: Mrs. Harriet A. Johnson, Mrs. Mary C. Hunt and Elizabeth (twins), William, Edward, Mrs. Ellen C. Rice, and Frances.

RUSSELL S. TAFT, chief justice of the Supreme Court of the State of Vermont, was born at Williston, Vermont, January 28, 1835. He acquired his education in the local schools and by private study, and after a thorough legal preparation was admitted to the bar of Chittenden county in

November, 1856, three years after he had removed to Burlington to reside. In May, 1881, Judge Taft returned to Williston to live, but remained there only a short time, and for many years past has been a citizen of Burlington.

Very early in his professional career he acquired a reputation as a well read, conscientious and hard-working lawyer; he made friends rapidly, and very naturally early in his legal career became a candidate for the suffrages of the people. From 1861 to 1864 he was a member of the board of selectmen of the town of Burlington, and from 1865 to 1869

annually placed on the bench by his constituents, part of the time being first assistant judge and for several years chief justice. A member of the bar writes: "As a judge he has brought to the bench, as he did to the bar, great purity and uprightness of character, learning, love of profession, industry, high integrity of mind and heart, and habit of patient and impartial investigation, which has made him distinguished as a lawyer and most acceptable as a judge." Another states: "His dominant characteristics are wise discrimination, broad reasoning, unquestioned honesty and firm determination." During his term as justice of the Supreme Court, he has handed down many valuable decisions and in his various positions of public trust his loyalty to the interests of his constituents has been proverbial.



RUSSELL S. TAFT.

served as an alderman of the city of Burlington. He was State's attorney for Chittenden county from 1862 to 1865; a senator from that county in 1865 and 1866; city attorney for the city of Burlington in 1871 and 1872; from 1872 to 1874 Judge Taft was lieutenant governor of the State of Vermont, and registrar of probate in the district of Chittenden from 1863 to 1880. In the latter year he represented the city of Burlington in the legislature; also in 1880 he was elected sixth assistant judge of the Supreme Court of Vermont, since which time he has been bi-

HAMILTON SULLIVAN PECK, was born in Royalston, Massachusetts, October 22, 1845, son of Sullivan and Czarina (Davis) Peck. He is of English descent on the father's side, and of Scotch descent on the mother's. The branch of the extensive Peck family to which he belongs dates back through over twenty generations to John Peck of Belton, Yorkshire, England, and the motto on the family coat of arms "Probitatem quam divitiis"—probity rather than riches—has characterized many of the descendants. The first American ancestor was Joseph Peck, who, fleeing from Hingham, England, to avoid religious persecution, came to Plymouth colony in 1638, and settled in Rehoboth, Massachusetts. The early education of Hamilton S. Peck was extremely limited. He attended one term at Athol, Massachusetts, High school, and three terms at the High school in Burlington, Vermont. He entered the University of Vermont in 1866 with creditable rank as a scholar. After his graduation he taught school for three years, pursuing at the same time the study of the law. He was admitted to the bar of Chittenden county, April, 1873, and commenced practice in Burlington, where he has since re-

sided. In 1878 he was elected State's attorney for Chittenden county and held the office for two years. In 1883-85 he was a leading member of the board of aldermen of Burlington. He held the office of city judge for six years, 1888-94. In 1896 he was elected mayor of Burlington. He filled the office with marked ability and credit, and received a re-election in 1897 without opposition. He has been an active earnest and working republican. He became a member of the republican State committee in 1892, and was its efficient secretary for four years, 1892-96. He was president of the republican league of Vermont, 1896-98.



HAMILTON S. PECK.

Mr. Peck is a prominent member of the Masonic and other secret orders, and is now commander in chief of the Vermont consistory. At the session of the Vermont legislature for 1900, he was elected Judge Advocate General.

On January 28, 1875, he was married to Miss Selma A. Aiken, daughter of Hon. D. W. Aiken of Hardwick, Vermont. They have one child: Roy Hamilton Peck.

HENRY BALLARD, Burlington.—One of our great writers has said that biography is the only true history: hence the

records of the lives of those who have honored and dignified their avocations are worthy of permanent preservation. Of all the varied walks of life the legal profession exacts from its followers the highest standard of excellence and in order that a man may achieve greatness it requires of him not only learning, but native ability, force of character, energy and integrity.

In this honorable profession Henry Ballard has attained high distinction and is to-day the acknowledged leader among the criminal lawyers of the State of Vermont. As a trial lawyer and advocate, in civil as well as criminal cases, he has few peers, while he is at the same time recognized as one of the ablest and safest counselors in New England.

Henry Ballard was born at Timmonth, Rutland county, Vermont, April 20, 1839, and received his literary education in Castleton Seminary and the University of Vermont. He entered the latter institution in September, 1857, and was graduated in August, 1861, after a particularly brilliant course, receiving the degree of A. M. three years later. In 1864 he was selected to deliver the Master's oration at the college commencement, an honor conferred only upon men of distinguished qualifications.

In 1861 Mr. Ballard enlisted as a private in Co. I, Fifth Vermont Volunteer Infantry, and participated with his regiment in all of the battles of the memorable peninsula campaign of General McClellan, up to July, 1862, when he was obliged to leave the service on account of ill health, engendered by fever contracted in the swamps of the Chichahominy.

In September, 1862, he entered the Albany Law School and graduated therefrom in May, 1863, with the degree of LL.B. During his course in this institution he distinguished himself both as a student and as an orator, and began to exhibit the exceptional forensic powers which have since aided in placing him in the front rank of his profession and of public speakers. The Hon. Amos Dean, founder and dean of the school, pronounced him one of the

best students ever graduated from that institution. At the law school the Hon. Joseph H. Munley, the distinguished political leader of Maine, was one of his classmates.

After graduating from the law school, Mr. Ballard entered the law office of Hon. Daniel Roberts of Burlington, Vt., and was admitted to the bar of the State in September, 1863. Since that date has resided in Burlington, and has been actively engaged in a very large law practice extending throughout his own and into adjoining states. He was admitted to practice in the United States Courts in 1864. For thirty-five years past Mr. Ballard has



HENRY BALLARD.

been a prominent and well-known figure among the bar of Vermont and has made a speciality of criminal practice. It is doubtful if any other lawyer in Vermont has been engaged in so many important criminal trials, and his success has been remarkable. He is generally considered by both his professional brethren and the public as well nigh invincible before a jury. His large law practice has precluded his acceptance of many political offices.

In politics Mr. Ballard has always been an ardent republican and has given his party the benefit of his rare oratorical ability in every

presidential campaign since 1868, his efforts on the "stump" in this direction extending into the states of New Hampshire, New York and Massachusetts. He was a delegate from Vermont to the national republican convention in Chicago in 1884, when he was chairman of the committee on credentials and was highly eulogized for the able manner in which he handled the delicate cases which came before the committee. There were forty-two contested seats, yet he skillfully guided the committee to a successful issue and made a report which was agreeable to the contestants and satisfactory to the convention, the same having been accepted without a dissenting vote. He represented Chittenden county in the State senate in 1878-79 and sat in the assembly as representative from the city of Burlington in 1888 and 1889. He served as chairman of the general committee of the house and reported sixty-five bills, all of which, with one exception, was accepted and passed by the legislature. In both the assembly and the senate he made notable speeches on important measures, and was regarded as one of its most efficient members.

Mr. Ballard is a member of several societies, and clubs, among others the Webster Historical Society of Boston; the American Institute of Civics of New York City; the Home Market Club of Boston; the Algonquin and Ethan Allen clubs of Burlington; the Vermont Fish and Game League; the Stannard Post of the G. A. R., and is a charter member of the Loyal Legion of Vermont. As will be inferred from the names of some of these organizations Mr. Ballard is an enthusiast in out-door games and sports. Indeed, all efforts tending to the physical, mental and moral advancement of man find in him an efficient advocate.

PETER THACHER WASHBURN was born in Lynn, Massachusetts, September 7, 1814, and in 1817 his father's family moved to Cavendish. After attending the district school he became a student in the Black River

academy and graduated from Dartmouth college in 1835. Immediately after his graduation he commenced the study of law with his father, where he remained, except some three months, when he was in the office of William Upham, an eminent lawyer of Montpelier, until admitted to the Windsor county bar in the December term of 1838. In January of the following year he began the practice of his profession at Ludlow. In 1844 he moved to Woodstock and entered into partnership with Charles P. Marsh, and the law firm of Washburn & Marsh became one of the most widely



PETER T. WASHBURN.

known in the State. This partnership continued until his death, February 7, 1870.

General Washburn, by which title he was better known throughout Vermont, held many political offices. He was from October, 1844, to October, 1851, inclusive, reporter of the decisions of the Supreme Court, and represented Woodstock in the legislature of 1853-54. On the breaking out of the war he went to the front as captain of the Woodstock Light infantry, was subsequently lieutenant-colonel, and at the close of his services was colonel of his regiment. He fully intended to continue in the service, but on account of his health it

was thought by him and his friends that he could do better service in the place to which he was appointed soon after his return to Vermont. In October, 1861, he was appointed adjutant and inspector-general of Vermont, which position he filled until the close of the war. The character of his work as adjutant and inspector-general was exceptional in its extent and thoroughness, and his reports were models of their kind. At the State election held in September, 1869, General Washburn was chosen governor of Vermont and was in office at the time of his death; he was also at this time trustee of the University of Vermont and State Agricultural college, and president of the Woodstock railroad. He always took an active interest in the political and educational interests of the State.

Governor Washburn was twice married, his first wife being Miss Almira Ferris, of Swanton, Vermont. By this marriage there were two children, viz.: Ferris Thacher, died at the age of eighteen, while a student of Dartmouth college; Emily May, died at the age of six years. His second wife was Miss Almira Hopkins, of Glens Falls, New York. Of their family of four children, three are living, viz.: Elizabeth Almira, wife of Professor T. W. D. Worthen; Mary Hannah, wife of George B. Parkinson; Charles Hopkins.

SUMNER ALLEN WEBBER was born in Rutland, Vermont, December 19, 1798. He was a son of Christopher Webber, who moved from Rutland and settled in Cavendish, Vermont, where Sumner A. spent his boyhood. He received his education in the district school in Cavendish, and at the Norwich Military academy. He studied law, and after being admitted to the bar commenced the practice of his profession in Rochester, Vermont, attaining a high position as a counselor and advocate, ranking with the foremost men of his day in the profession. He was contemporary with Judge Collamer, Honorable An-

drew Tracy, and ex-Governors Washburn and Converse.

Mr. Webber served two terms in the house of the State legislature, and one term in the senate. He took an active part in the political discussions of the day and was among the earliest advocates of the principles of the free soil party, and was at one time the candidate of that party for congress. As a speaker he was logical, forcible and effective, and was also an able writer. He was especially regarded as a safe counselor, oftentimes to his own seeming personal disadvantage advising



SUMNER A. WEBBER.

a settlement of causes rather than make expensive litigation for his clients.

In his social life he was genial and entertaining. His home was noted for hospitality. He married, January 5, 1831, Phebe J., daughter of Joseph and Phebe (Jefferson) Gurnsey. She was born in Rochester, September 9, 1810. They had children as follows: An infant son, born January 21, 1832, died the same day; Sumner Jefferson, born June 29, 1833, died August 18, 1834; Christopher Allen, born August 8, 1837, educated at Barre and West Randolph academies, studied law with his father and practiced his profes-

sion in company with him until the death of the latter and thereafter till his death, which occurred July, 1878; married October 16, 1862, Julia E. Cooper, and had these children, Eveline, La Fayette and Marvella Christopher; Phebe Augusta, born January 22, 1840, died September 13, 1849; Adaline Electa, born October 9, 1842, married Dr. Frederick Langdon Morse, who was born July 27, 1847, son of Joseph L. and Eliza (Chandler) Morse. Dr. Morse was a graduate from the Medical college at Ann Arbor in 1871, and practiced his profession in Windsor until his death, which occurred June 11, 1888. Charles Sumner, born November 12, 1848, died September 24, 1849.

Sumner Allen Webber, the subject of this sketch, died at Rochester May 20, 1862.

THOMAS J. DEAVITT is a native of Vermont and was born at Richmond, February 17, 1840. His parents, William and Christina (Preston) Deavitt moved onto a farm in Moretown in 1849, where they resided until their death in 1896 and 1894 respectively. William Deavitt was a native of Troy, New York, but moved at an early age to Vermont. He was of Scotch-Irish descent and his wife of good old New England stock. Her ancestors emigrated from the State of Connecticut to Vermont and were among the first settlers in the town of Bolton, where she was born. Her father procured large tracts of forest land when it was cheap, and with axe and fire converted the majestic forest into tillage fields, and became the possessor of several fine farms in both Bolton and Richmond. In those early days he built a grist-mill and a saw-mill on Huntington river, where he had a fine water power. For a great many years the farmers for many miles carried their grain to his mill to be ground and their logs to be converted into lumber to build frame houses to take the place of log houses built by the first settlers. He served as a soldier with the Vermont volunteers at the invasion of Plattsburgh, New York, by the British in the war of 1812.

Her grandfather, James Bennett, was an officer in a Connecticut regiment under Washington during the war of the Revolution. The subject of this sketch can remember seeing his great-grandmother when she was receiving a pension from the United States on account of her husband's service in the American Revolution.

After taking a thorough academic course Thomas J. Deavitt began the study of law at Waterbury, Vermont, in the office of Governor Paul Dillingham, the father of W. P. Dillingham, United States senator from Vermont. The Confederate Canadian raid upon St. Albans was made while he was a law student, and he immediately enlisted in a company to defend Vermont against other anticipated raids from Canada, which were causing great alarm among the people of the State. This was in the fall of 1864, and although never ordered south, the organization was kept up until changed into State militia at the close of the war, 1865. Mr. Deavitt, who had procured more than one-half of the men of the company to enlist, was offered a commission, but his generosity prompted him to suggest that those of the company who had seen service (and there were several) be thus honored, and his counsel prevailed, he serving as sergeant.

He was admitted to the Vermont bar at Montpelier in 1866 and to the United States courts soon afterwards. He began the practice of his profession in Moretown, Vermont, where he remained until 1872, removing then to Montpelier, where he has since lived. He pays special attention to the securing of pensions and patents and to commercial law, in each of these branches of practice he enjoys a flattering reputation for ability and success. He is an authority in those branches of the law, and has found time to edit several digests of the Vermont statutes for commercial agencies and non-resident attorneys; also the Vermont legal department of Martindale's American Law Directory has been prepared by him for some years past. He has been the correspondent of the Bradstreet company since 1867 con-

tinuously. Mr. Deavitt prosecuted the case of *Foster vs. Redfield* and others, a case which attracted wide attention. It was an application for a writ of mandamus to compel a court to render up judgment on its own decision. Another case, *Torrey vs. Deavitt*, administrator, is a leading case, where the court decided the legal necessity of recording an assignment of a mortgage in the clerk's office where the mortgage was recorded. The decision was rendered by Chief Judge Ross, who considered it one of his most important cases. Mr. Deavitt's legal practice has not been confined to Vermont. He has had cases in Worcester, Massachusetts, New York city, Philadelphia and Boston. Among the Boston cases was one in which were associated with him the then Governor Gaston, Rodney Land and A. Russ. The case was won for Mr. Deavitt's client. Mr. Deavitt was retained in the case of *Thomas C. Bean's* estate in Texas. Mr. Bean died in the State of Texas, leaving three million dollars' worth of property and no near relatives. Mr. Deavitt's clients claimed to be distant relatives of Colmore Bean, the father of Thomas C. Bean, who was a native of New Hampshire, and it was necessary to show that Colmore had resided in the city of New York and Washington, D. C., and Mr. Deavitt spent considerable time in both cities searching old directories and records. He found where Colmore paid taxes in Washington for a number of years, owned a slave and real estate, and was married there as early as 1811. The case is still pending in the courts of Texas, where there are fourteen claimants of the property struggling for it.

Mr. Deavitt taught school six terms and has been superintendent of schools several years. The cause of education has always been fostered by his best efforts. In the constitutional convention of 1870 Mr. Deavitt was a member and had charge of debentures. Until the presidential election of 1900 he had affiliated with the Republican party. His independent and fearless character had in the spring of 1899 compelled him to criticize in an

open letter the administration of the pension department at Washington. As the features in the management to which he objected were still strongly in evidence when the canvass opened, he worked and voted against the national Republican ticket that year. The letter referred to was written to Hon. J. D. Bodkin, M. C. from Kansas, who was one of the committee on pensions, who used it as a part of his speech on the pension question, and it was printed in the Congressional Record. The letter was also used as a campaign document by the Democratic national managers, hun-

quested him to examine the statutes of various States relating to the care of Union soldiers, and he drafted the bill for the Soldiers' Home which resulted in locating a Soldiers' Home in Bennington. The bill was finally passed, but not until after much opposition was overcome by flooding the legislature with petitions from all parts of the State. Before the Home was opened to receive indigent soldiers Mr. Deavitt gave several pictures and \$100 in cash to furnish a room in that institution. At present an average of one hundred soldiers are taken care of in a manner worthy the Green Mountain State.

Mr. Deavitt is connected with several public institutions and business undertakings, to the conduct of which he has brought rare good judgment and prudent business methods. Since 1891 he has been the president of the Capital Savings Bank and Trust Company, being the first and only president of that beneficent institution. He is a director in the Barre and Montpelier Power and Traction company, having been elected to the position before he owned any of the company's stock, a fact that is considered a marked tribute to his financial ability. In 1888 he became a director and manager and treasurer of the Watchman Publishing company and conducted a department known as *The Soldiers' Budget* in the *Vermont Watchman*. He has also written several newspaper articles in behalf of the enforcement of the prohibitory law, and has had much to do in curtailing the traffic in intoxicating drinks in his own city, being president of the Anti-Saloon League of Montpelier.

Mr. Deavitt married in 1870 Carrie E., only daughter of Luther Harrington, of South Royalton, Massachusetts. They have four sons and one daughter. His son, Edward H. Deavitt is a graduate of the Vermont University and Harvard Law School. He read law in his father's office, and was admitted to the bar at Boston, Massachusetts, and at Montpelier, Vermont, in 1896. He is a rising lawyer and is associated in business with his father. He holds the office of referee in bankruptcy.



THOMAS J. DEAVITT.

dreds of thousands being distributed in districts where the soldiers' vote was strong.

Although he has never held or sought political office, he has often been influential in advancing legislation and has drafted many important bills that became laws. His aggressiveness and ability in this line are well illustrated by the efforts he exerted in helping to carry through the act incorporating the Vermont Soldiers' Home, which passed in 1884, and which had many times failed of passage before that when in charge of other hands. After his presentation of the facts as he saw them, the legislative military committee re-

Henry M. Devitt is a graduate of Vermont University and Massachusetts School of Technology at Boston, a chemist in the employ of the Western Electric Company of Chicago. Carrie E. also graduated from Vermont University and is a teacher in the People's Academy at Morrisville, Vermont. George T. and William J. are both in college.

ISAAC FLETCHER REDFIELD, lawyer, jurist, author, justice, of Windsor, Vermont, and afterwards Charlestown, Massachusetts, was the son of Dr. Peleg Redfield and Hannah Parker Redfield. He was born at Weathersfield, Vermont, April 10, 1804. In 1805 his father moved the family to Coventry, Vermont. After a district school education as a foundation, he pursued his studies further, entered Dartmouth college and was graduated therefrom in 1825. He returned to his native State and two years after was admitted to the Orleans county bar and began to practice at Derby, Vermont. From 1832 to 1835 he was State's attorney for Orleans county, when he was elected judge of the Supreme Court. From Derby he moved to Montpelier upon his elevation to the bench and about 1846 to Randolph Center, occupying the old Judge Chase homestead at the latter place. Here he remained about four years, when he moved to Windsor, where he resided until 1861, moving to Boston in that year.

He served as associate judge of the Supreme Court from 1835 until 1852, when he was elected chief judge, which office he held until 1860, when he declined further service on the bench. His court was noted not only all over New England, but his decisions were quoted to such an extent that the court became known in legal circles as the "Redfield Court." His associates on the Vermont bench were Charles K. Williams, Chief Justice Stephen Royce, Samuel S. Phelps and Jacob Collamer. It is not too much to say that the court thus formed has never been surpassed in this country. Eight times unanimously elected chief justice,

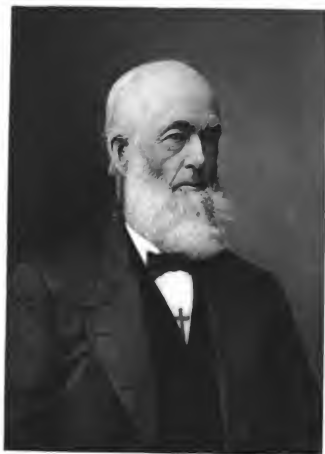
the elections occurring annually in those days, his term on the bench was the longest of any in the history of that office in Vermont, though exceeding by only two months Judge Royce's service.

What the commercial law was to Mansfield, and the constitution of the United States to Marshall, railway law became in a lesser degree to Redfield. February, 1834, on motion of Daniel Webster, Judge Redfield was admitted to practice before the Supreme Court of the United States.

As a legal author he was also well known, his treatise on the Law of Wills, (three volumes, 1864-1870); Law of Railways (two volumes, 1857 and 1873); Civil Pleading and Practice (with W. A. Herrick, 1868); Law of Carriers and Bailments, (1869); probably being the best known of his works. He edited an edition of Judge Story's works on Equity Jurisprudence, Equity Pleading, and on the Conflict of Laws, and Prof. Greenleaf's work on the Law of Evidence. More than twelve years during his residence near Boston he was editor of the American Law Register. In connection with Caleb Cushing he was appointed special counsel by Secretary Seward to represent the United States in cases growing out of the Confederate States' war claims in England, and the success attained in this mission was not only pleasing to his government, but he also gained the confidence and respect of the English people to a remarkable degree. Judge Redfield received the degree of LL. D. from Trinity college in 1849, and from Dartmouth college in 1855.

On the 28th of September, 1836, he was married to Mary Ward Smith of Stanstead, Canada, and on May 4, 1842, to Catharine Blanchard Clark of St. Johnsbury, Vermont. Judge Redfield died in Charlestown, Massachusetts, March 23, 1876, and was buried at Windsor, Vermont. No children survived him.





JAMES HERVEY MACOMBER, Burlington, is a native of Vermont, having been born in Westford on the 18th of April, 1867. His parents were James Hervey and Frances (Beach) Macomber, both of whom were descended from good old New England ancestry. On his father's side the family were represented among the Mayflower passengers.

Like the majority of New England's attorneys, Mr. Macomber laid the foundation of his education in the district schools, afterward preparing for college at the St. Johnsbury, Vermont, academy. In 1890 he graduated from the University of Vermont and in 1895

Burlington. In 1896 he was appointed engrossing clerk for the Vermont legislature, which office he held for two years. In 1897 he formed a partnership with Rufus E. Brown, which still continues. Mr. Brown's biography appears on page twenty-one, Vermont section of this publication. Since the partnership was formed, the firm has been actively engaged in the practice of law and has taken part in some of the most important cases tried in Chittenden county. In April, 1899, Mr. Macomber was appointed city grand juror and re-appointed April, 1900.

On the 28th of November, 1899, he was married to Nellie A. Mower, daughter of Emory C. Mower of Burlington.



JAMES H. MACOMBER.

from the Boston University Law school, *augustiniana laude*. He did not, however, enter upon the study of law immediately after graduation from the University of Vermont, but accepted a position as principal of the Lamouille Central academy, Hyde Park, Vermont, which he held for two years. While stationed there he was appointed by the governor the official examiner of teachers for Lamouille county.

Mr. Macomber was admitted to the Suffolk county (Massachusetts) bar in July, 1895, and to the Vermont bar in October of the same year and immediately commenced practice in

BENJAMIN H. STEELE, descends the eighth generation from George, who came, in company with a brother John, from Essex county, England, about 1631-2, settled at New Town, (now Cambridge) Massachusetts, removed to Hartford, Connecticut, and died in 1663. He had four children, of whom James was the youngest child. He married, first, Anna Bishop, second, Bethia, widow of Deacon Samuel Stocking. In 1675 he was appointed commissary in King Philip's war. James, second child of six children of the above, by the first marriage, born about 1658, married Sarah Barnard, lived at Hartford, Connecticut. Rev. Stephen, the third in a family of six children of James and Sarah, born at Hartford, 1696, married May 2, 1720, Ruth Porter, of Hadley, Massachusetts. He graduated at Yale college in 1718, and was the first settled minister in Tolland in 1720. James, seventh child of the nine children of Rev. Stephen and Ruth, born February 6, 1737, married, first, January 24, 1754, Abigail Huntington, second, Dorothy Converse, third, Abigail Makepeace. He had thirteen children, seven by the first marriage, two by the second and four by the last. Zadoc, his third child by the first marriage, born December 17, 1758, married February 10, 1758, Hannah

Shurtleff. He was taken prisoner by the Indians who burned Royalston, Vermont, October 17, 1780, and with other captives was placed in a prison on an island in the rapids above Montreal, from which he made his escape. He died at Stanstead, Canada, March 23, aged eighty-seven. Sanford, the ninth of the ten children of Zadoc and Hannah, born April 13, 1804, married December 14, 1835, Mary Hinman, of Derby, Vermont, born August 14, 1812. He lived in Stanstead, Canada, and died June 26, 1852.

Benjamin H. Steele was born in Stanstead, Province of Quebec, February 14, 1837, the eldest in a family of five children, two daughters and three sons, of Sanford and Mary Steele. Very early in life he evinced a strong taste for mental culture and worked faithfully to gratify this desire. He attended school in his native place and in the academy in Derby Center, Vermont, and meantime taught the district school while a mere lad. He also spent some time in St. Pierre college, Province of Quebec, and afterwards became a member of Norwich university, then under the presidency of Dr. Bouras. He remained here about one year and then entered the sophomore class of Dartmouth college in the spring of 1855. Both in scholarship and talents he stood in the front rank of his class, a class, too, of marked ability and promise. He graduated with the highest honors of his class from Dartmouth in 1857. During the last year of his college life, he had carried along with his academic duties also his professional studies, which accounts for his admission to the bar so soon after his graduation. He was admitted to the Suffolk bar in Massachusetts, also to the Orleans bar in Vermont in 1858, and commenced practicing at Derby Line. During the eight or nine years of his professional life at the bar, he gave himself unremittingly to the close and thorough study of the law, and laid that broad and solid foundation which was both the occasion of his appointment to the Supreme Bench of Vermont, and the secret of his subsequent distinguished career upon it.

He received his appointment to the Supreme Court in the autumn of 1865, and was the youngest man who ever filled that position. If there were any misgivings of the propriety of the appointment of so young a man to the Supreme Bench judgeship so much can be said with truthfulness, that wherever in the State he sat for the trial of causes, he completely vindicated the executive action. He remained on the bench about five years, when on account of pressing private business, he declined a re-election, to the unanimous regret of the bar and the public. During the term of office he delivered several opinions of uncommon interest and importance. Notable was that of the Rutland railroad case, an opinion conceded to be an honor to his legal and judicial attainments and ability. After his withdrawal from the bench he lived in comparative retirement at Hartland, occupied with private business which claimed his immediate and personal attention. He was a member of the Vermont board of education, and rendered valuable and efficient service to the cause of common schools. Though not a blind partisan he took a living interest in politics. He was a delegate at large from Vermont to the Philadelphia convention, which renominated General Grant, and took a leading part in formulating the platform of the party on that occasion, as a member of the committee on resolutions. He died on Sunday, July 13, 1874.

Judge Steele married February 6, 1861, Martha, daughter of David H. and Wealthy (Thomas) Sumner, who was born May 19, 1840.

GEORGE FRANKLIN EDMUNDS, one of the most prominent constitutional lawyers of the present generation, was born at Richmond, Vermont, on the first day of February, 1828. After a thorough preliminary education he studied law and was admitted to practice in 1849. In 1851 he removed to Burlington, where his talents soon won him recognition.

Only three years after his removal to Bur-

lington, Mr. Edmunds was elected to the Vermont legislature, in which body he served continuously from 1854 to 1859, three years of which time being speaker. In 1861-62 he was sent to the Vermont senate and during that term was president *pro tempore*; he then retired to what he supposed was private life, but his constituents needed him, and early in the Civil war period he was a delegate to the State convention of republicans and war demerats, for which body he drew the resolutions adopted. With voice and pen he helped sustain the United States government during the great rebellion and to mould public opin-



GEORGE F. EDMUNDS

ion, and as a token of respect he was appointed by the Vermont governor in 1866 to the United States senate, succeeding Hon. Solomon Foot, deceased. Later he was elected by the legislature to fill out the unexpired term, and served continuously by re-election until 1891, when he resigned.

During Mr. Edmunds' career in the United States senate he was active in the impeachment of Andrew Johnson; he supported Grant in his controversy with Sumner; acted a very influential part in developing the reconstruction legislation, always advocating conserv-

ative plans; was a member of the electoral commission in 1876-77; was the principal exponent of the Pacific railroad refunding act; was noted for his legal acumen; readiness in repartee; as a strict parliamentarian; for fearlessness in opposing political jobs and steals. On the twenty-second of March, 1882, he succeeded in getting passed and signed by the president a bill known as the "Edmunds act," which had had for its object the suppression of polygamy in Utah, disfranchisement being one of the penalties for those who practiced it, and in 1884 the Supreme Court upheld the law in five cases. In 1887 a similar bill was passed of which he was the principal author; in 1886 through his efforts a bill was passed providing the manner for counting the electoral vote, and the same year he was the leader of the movement in the senate which tried to force President Cleveland to furnish that body with all the documents necessary to show cause for recent removals from office. After Mr. Arthur became president he was president *pro tempore* of the senate. He served during his several terms in the senate on the following committees: commerce, public lands, appropriations, pensions, retrenchment, private land claims, the library, the judiciary, being chairman of the last committee for several years.

FREDERICK BILLINGS, the son of Oel Billings and Sophia Wetherbe, was the fourth child of a family of nine children—six sons and three daughters—all of whom lived to adult age. The Billings family is an old one, dating back to the time of Henry III., and numbering among its more distinguished members a Lord Chief Justice of England. Mr. Billings' great-grandfather, Samuel Billings, of New London, Connecticut, was killed in the defense of Fort Griswold, in 1781; and his grandfather, John Billings, was also a soldier in the war of the Revolution. The latter married Nancy, the daughter of Governor Jonas Galusha of Vermont, and they had ten chil-

children, of whom Oel Billings, the father of Frederick, was one.

Frederick Billings was born in Royalton, Vermont, September 27, 1823. When he was twelve years old he removed with his father to Woodstock, which was thereafter the family home. He fitted for college at Meriden, New Hampshire, and at the age of seventeen entered the University of Vermont, from which he graduated in August, 1844. Among his classmates in college were Bishop W. B. W. Howe of South Carolina, Judge C. L. Benedict of New York, the late Rev. M. M. Colburn and the late Hon. William Collamer of Woodstock. Young Billings was a brilliant scholar, and his wit and flow of spirits made him a favorite in college and social circles. After leaving college he studied law in the office of Hon. O. P. Chandler of Woodstock, and was admitted to the Windsor county bar in 1848. He was appointed secretary of civil and military affairs by Governor Horace Eaton in 1846, and held that office during Mr. Eaton's two terms as governor. In 1848 the California "gold fever" broke out and Mr. Billings' attention was especially directed to the new Eldorado by his brother-in-law, Captain B. Simmons, who was a ship captain and had made repeated voyages to the Pacific coast, and in February, 1849, in company with Captain and Mrs. Simmons, he went to San Francisco by the Isthmus route. Mrs. Simmons contracted Panama fever on the way and died four days after her arrival, and Captain Simmons died in San Francisco a year later. Mr. Billings opened the first law office in San Francisco and at once made his mark. It was at a time and in a place where success in his profession meant wealth and influence, and he rapidly acquired both. He became a partner in the leading law firm of San Francisco, that of Halleck, Peasey, Billings & Park, of which General Halleck, subsequently for a time general in chief of the Union armies, and Trever W. Park were members. The law firm was dissolved in 1861, on Mr. Billings going to England in company with General Fremont upon business connected with the general's

great Mariposa estate. Mr. Billings was an influential and earnest actor in the exciting events of the formative period in the history of California, and active in the various movements for the establishment of law, order and the institutions of education, religion and civil government, through which the new State became a stable commonwealth. He was especially active in defeating the conspirators who endeavored to detach California from the Union at the outbreak of the civil war, and in company with Starr King he made a tour of the State, in behalf of the National cause, everywhere by his patriotic appeals electrifying the



FREDERICK BILLINGS.

audiences which assembled to hear them. Although he was an unusually impressive speaker and peculiarly fitted for a public career, Mr. Billings never cared to enter political life. He accepted the responsible position of attorney-general of California, but held no other political office, although often pressed to take nominations for such offices during his residence in San Francisco. After the re-election of President Lincoln, and while he was reconstructing his cabinet for his second term, the California delegation in congress urged upon him the propriety of giving California a representative

in the new cabinet, and unanimously recommended Mr. Billings for the place. Only two days before Mr. Lincoln was assassinated, he gave assurance to a member of the delegation that their request would be complied with. After Mr. Lincoln's death, the legislature of California, then in session, unanimously passed a resolution requesting President Johnson to appoint Mr. Billings to his cabinet as a representative of the Pacific coast. These facts attest the high estimation in which Mr. Billings was held by the people of California at the time when he left that State to settle down in his old home in Vermont.

He remained a bachelor up to his thirty-ninth year. In March, 1862, he was married in New York to Julia, daughter of Dr. Eleazar Paroly, of that city. Soon after this event he closed up his business in San Francisco, and after a period spent in foreign travel, he returned in 1864 to Woodstock to make his home there. In 1869 he purchased the Marsh estate comprising the homestead of the late Charles Marsh, father of George P. Marsh, which occupied the most beautiful and conspicuous site in that beautiful village. Mr. Billings twice almost wholly reconstructed the mansion, and in the words of the historian of the town of Woodstock "he went on in making additions and improvements, till at length in the extent of territory, in the variety and orderly arrangement of the various parts of this wide domain and in the convenience and elegance of the buildings erected thereon, his home on the hill came to resemble one of the baronial estates of the old world, and is not surpassed in these respects, and in beauty of situation, by any similar establishment in New England." He became president of the Woodstock National bank about this time, and took an active interest in business, and political and public affairs, both in Vermont and in the city of New York, where he had a handsome residence and spent his winters. In 1872 he was a candidate for the republican nomination for governor of Vermont. It was the first convention held after the adoption of the biennial system and

other changes in the constitution of our State. Mr. Billings was less known then than afterwards, and owing to various causes and complications attending the peculiar condition of Vermont politics, he failed, by only a vote or two, of the nomination. He accepted the situation in a manly and eloquent speech in the convention, at the close of which, had it been then possible to reverse the action of the body, he would have been nominated by acclamation. At no subsequent time would he consent to be a candidate for civil office. He, however, did not lose his interest in State and National politics, and in 1880 he was chosen as a delegate to the republican national convention, and presented the name of George F. Edmunds, as the choice of the republicans of Vermont for president, in one of the finest and most striking speeches of that memorable convention. He was a prominent member of the Union League club of New York city, and was known in New York and elsewhere as one of the strong supporters of the republican party with voice and vote and purse. He was also a member of the Lawyers, Century and Down Town clubs of New York, and a member of the New York Chamber of Commerce. After the failure of Mr. Jay Cook in 1873, and the apparent collapse of the Northern Pacific Railroad company, Mr. Billings became interested in that great enterprise. He made extensive purchases of its stock and securities, then greatly depressed; he brought fresh capital to the coffers of the company, and became its president; the work of construction was resumed with vigor, the vast tracts of land granted by congress were marketed, and the road was finally pushed through to completion. Shortly before the occurrence of this event, Mr. Billings disposed of enough of his interest in the company to the combination represented by Mr. Henry Villard, to give the latter control. But while the fame of the final actual accomplishment of the grand result thus fell to another, it remains true that Mr. Billings was the master spirit of the enterprise and the chief architect of its success. The

transaction with Villard added several millions to Mr. Billings' ample fortune. The latest great commercial enterprise to which he gave his name and help was the Niagara canal. He was one of the incorporators, and at the time of his death a director and chairman of the executive committee of the company. He was also a director or trustee in the following corporations: American Exchange National bank, Farmer's Loan and Trust company, Delaware and Hudson Canal company, the Manhattan Life Insurance company, the Manhattan Savings institution, the Presbyterian hospital, the Hospital for Ruptured and Crippled (all of New York city), the Connecticut River Railroad company, the Vermont Valley and Sullivan County railroads, the Connecticut and Passumpsic and the Rutland Railroad companies. He was president of the Woodstock Railway company and of the Woodstock National bank.

Mr. Billings' attachment to his Vermont home was shown in many ways. He was a generous giver to all good objects in Woodstock. The Congregational church there, of which he was a member, was an especial object of his love and care. He built its chapel at a cost of \$15,000 as a memorial to his father and mother. He rebuilt the parsonage; and among his latest cares was the reconstruction of the church building which he transformed at an outlay of \$40,000 into one of the most tasteful and appropriate church structures in all New England. Nothing, however, will cause Mr. Billings' name to be held in higher and more lasting remembrance than his gift to his alma mater, the University of Vermont. In 1867 he became a member of its board of trustees and held the office for six years. After the death of Hon. George P. Marsh, United States minister to Italy, in 1882, Mr. Billings purchased his library, famous among scholars and philologists, gave it to the university and signified at the same time his intention to erect a library building worthy of the Marsh collection and of the choice library of the university. He engaged the services of the great

est American architect, the late H. H. Richardson, and the Billings library stands the noble monument of his munificence, the pride of the city of Burlington and the admiration of every visitor. It represents, including the cost of the Marsh collection and Mr. Billings' gifts of money for the purchase of books and for cataloguing and an endowment fund of \$50,000, an outlay of nearly a quarter of a million dollars. Mr. Billings also, during the last years of his life, gave \$50,000 to Amherst college, and \$50,000 to Mr. Moody's school at Northfield, Massachusetts. He received the honorary degree of Doctor of Laws from the University of Vermont. Seven children were the fruit of Mr. Billings' marriage, all, save the oldest, born in Woodstock. He died September 30, 1890, and Vermont lost one of her foremost citizens and the world a noble man.

Mr. Billings was one of the remarkable men of the century. For more than a generation, ever since 1848 when he went with the Argonauts to California, he was prominent in one or another of many of the great national enterprises which have made this age memorable. He had the two distinct capacities which are rarely united in the same man, the capacity to organize and to execute. When the man appears who can combine these two functions, opportunities seek him, power comes to him, labors and responsibilities accumulate upon him. Mr. Billings died too early by twenty years, for a man of his constitutional vigor, from overwork. A friend spoke the truth of him when he said that Mr. Billings could not live longer because he had lived three lives already. Work came not only because of his abilities, but also because of his principles, his tastes, his enthusiasms. He was as eager in matters relating to learning, education, art, politics, charity and religion, as he was in matters of business. In fact he made all these interests a part of his business. In California, in New York, in Vermont, his extensive financial and railroad occupations did not so exhaust him but that he could find time and thought for churches, colleges, books, pictures,

even bric-a-brac and flowers. He was a man of universal sympathy. There is hardly anything good in human life into which he did not put some of his best thought and feeling and will. In many fields outside of his specialties he excelled. His literary taste was exquisite. His appreciation of works of genius in all departments was discriminating and his enjoyment of them keen. He was an orator of rare power. He could electrify a vast assembly in a political convention, and he could move and edify a prayer meeting. His ideas of education were so sound and comprehensive and scholarly, that he was at one time urged to take the presidency of the University of California. He might, had he chosen, have gone to the United States senate from California, in such high esteem were his statesmanlike qualities held by his fellow citizens of that State. In all these fields Mr. Billings was admirable—in many even great. But he was at his best in his social and religious character. In his home he was the most affectionate of men. He was a loving brother and devoted son. In his prosperity he was thoughtful for the welfare of all his relatives, especially of his parents, for whom he provided every comfort which his loving care could devise. He took great delight in the society of his neighbors and townsmen. Coming every year to his home in Woodstock, he became more and more attached to it and its surroundings. He was fond of being known as "Frederick Billings of Woodstock." He took intense and ever-growing delight in those rural scenes and associations and companionships which every natural heart enjoys. Mr. Billings was deeply and warmly religious. He had the simple strong faith in divine realities which large, generous natures usually have. It was at one time his purpose to enter the Christian ministry; and though he seemed to be providentially diverted from that career, he never ceased to regret the change in his course as a privation, and throughout his life in all religious activities and ministrations, he was actually more than half a clergyman and

always a minister. Of his benefactions we need not speak more at length, at least to our Vermont readers. Every one knows of them that they are not more admirable for their magnitude and variety, than for the modest, beautiful and loving spirit with which they were bestowed.

REBEN WASHBURN. The English ancestor of the Washburn family in this country was John Washburn, who was secretary of the Massachusetts company in 1628 in England, came from Eversham, England, as early as 1632, and was a resident of Duxbury, Massachusetts. The line of descent from the original settler to Mr. Washburn, who was of the sixth generation, was as fol-



REBEN WASHBURN

lows: John had a son John, who had a son Joseph. The latter also had a son Joseph, whose son Seth, was born in Bridgewater, Massachusetts, May 19, 1723, and was the father of Asa, who was born in Leicester, Massachusetts, July 25, 1757, and was the father of our subject.

Reuben Washburn was born in Leicester, Massachusetts, December 30, 1781, and at the

age of four years his father removed to Putney, Vermont, where, until he reached the age of twenty years, he aided in subduing the roughness of a farm in a new country. He afterwards fitted himself for and supported himself through college, graduating at Dartmouth college in 1808, being one of the first scholars of his class. For several years after finishing his education he was engaged as a teacher in several of the principal institutions in New England, and was at one time connected with Exeter academy with Professor Ebenezer Adams, afterwards of Dartmouth college. He commenced the study of law under the able instruction of Judge Jackson of Boston, and became a member of the Suffolk county bar. The practice of his profession was commenced at Lynn, Massachusetts, but in 1817 he removed with his family to Chester, Vermont; remaining there but a short time, he came to Cavendish, Vermont, and was a resident of the latter place until 1825, when he removed to Ludlow, and three years afterwards built the old family homestead. From the time of his locating in Ludlow till his death, April 23, 1860, Mr. Washburn continued to practice his profession, taking an important part in all matters pertaining to the political and religious interests of the town. He was an accomplished lawyer in the broadest sense. He was long regarded as the best read lawyer in the State, and as holding the first place in the law relating to real estate. Thoroughly grounded in the principles of the English common law, his conclusions were easily arrived at and were held in high esteem by the courts of the State. His mind was of a strong analytical cast, and his briefs clear and concise, while in the branch of special pleading, then the practice of the courts, he had no superior in the State. He was tall and commanding in his person, gentle and affable in his manners, of sterling integrity, and in all respects a fine example of the educated Christian gentleman of what is oftentimes termed the golden age of New England history. Mr. Washburn was united in marriage October 10,

1813, to Miss Hannah Blaney Thatcher, a daughter of Rev. Thomas C. Thateber, of Lynn, Massachusetts.

CARLOS COOLIDGE was born in Windsor, Vermont, June 25, 1792. His genealogy is as follows: Richard, born in 1666, died October 23, 1732. His wife's name was Susanna. She died October 20, 1736, aged sixty-six years. Nathaniel, born in 1700, died 1766, married Grace, daughter of Nathaniel and Anne Bowman, and had five children, of whom Nathaniel, their eldest son,



CARLOS COOLIDGE.

born December 7, 1728, married Dorothy Whitney, who died July 29, 1818, aged eighty-five years. He died December 24, 1773. They had six children, viz.: Susanna, Mary, Daniel, Nathaniel, Grace, and Nathau, father of Carlos, born December 6, 1766, married Betsey Curtis March 20, 1791; the latter was born May 2, 1760, died December 27, 1822. They had three children: Carlos, Mary, born October 15, 1793, died November 30, 1814, and Betsey, born November 17, 1801, died October 26, 1874.

Carlos Coolidge was graduated from Middle-

bury college with honor, in a class that contained such men as the late Hon. Charles Davis, judge of the Supreme Court of Vermont, Judge Jacob Lansing of Albany, New York, Rev. Joel H. Linsley, D. D., of Greenwich, Connecticut, and others equally prominent. He read law at the outset with the Hon. Peter Starr of Middlebury, and completed his studies, preparatory to admission to the bar in Windsor county, with the late Hon. Jonathan H. Hubbard of Windsor. He commenced the practice of his profession in Windsor in 1814 and continued it for a period of more than fifty years. He was the recipient of many tokens of popular favor from citizens of his own county and State. He was State's attorney for the county of Windsor from 1831 to 1836, and representative from Windsor to the general assembly from 1834 to 1837, and from 1839 to 1843. He was elected speaker of the house of representatives in 1836 and from 1839 to 1842, in which capacity he presided with unsurpassed dignity and urbanity. He was elected governor of Vermont in 1848, and re-elected in 1849. He was senator from Windsor county in 1854 and re-elected in 1855. He was one of the electors at large from Vermont in 1844, who indicated their preference for Henry Clay as president of the United States. In 1849 he received from his alma mater, Middlebury college, the well earned compliment of the degree of LL. D. This brief recital of some of the responsible posts to which Governor Coolidge attained without solicitation on his part, gives a faint idea of the character and attainments of the man. Governor Coolidge was, par excellence, a Christian gentleman. In his private and public life he bore himself without ostentation, with remarkable urbanity towards all, and discharged every public and private trust with thoroughness and ability. He died in Windsor, August 15, 1866.

Governor Coolidge married September 22, 1817, Harriet, daughter of Walter and Sarah (Gilbert) Bingham, born in Claremont, New Hampshire, April 6, 1796, died June 6, 1877.

They had two children, Mary and Harriet. The latter died June 5, 1831, aged five years. Mary, born June 29, 1818, married January 27, 1845, the Rev. Franklin Butler.

SAMUEL SHETHAR PHELPS, one of Vermont's noted jurists, was born at Litchfield, Connecticut, May 13, 1793. His father, John, was a Revolutionary soldier and a man of large means for his time; John's father, Edward, was also wealthy, a prominent citizen of Connecticut and in 1844-45 a member of the general court of that State. The founder of the Phelps family in America was William Phelps.

After early private and public school training, Samuel Shethar Phelps entered Yale, from which institution he was graduated in 1811. After graduation he studied law at Litchfield, Connecticut, and 1812 settled in Middlebury, Vermont. Hardly had young Phelps commenced the practice of his profession when the War of 1812 broke out, but his country was more to him than personal gain or professional distinction. He enlisted and remained in the army about two years, when he resumed his law work. Although always taking much interest in politics he refused all tenders of official honors until 1821, when he was elected a member of the Vermont legislature and served continuously in that body until 1832, in which year he was elected a justice of the Supreme Court by the legislature. This office he filled with great satisfaction to the bar and the public, and only resigned (1839) to accept of another great office with which the legislature had honored him—the United States senatorship from Vermont. To that office he was elected as a democrat; he held that position from 1839 to 1851, and upon the death of William Upham, served by appointment in 1853 and 1854.

Mr. Phelps was a prominent and able opponent of the abolition movement which kept gaining strength during his public life; he favored slavery and used every honorable

means to stem the tide of public opinion which finally swept that institution out of legal existence in the United States; as a member of the committee appointed to investigate and discuss the slavery question, he dissented from the report presented by Henry Clay. In 1854 he retired to private life and resumed the practice of law for only a short time at Middlebury, Vermont. Mr. Phelps died March 25, 1855.

In addition to his great ability as a lawyer, a judge, and a statesman, Mr. Phelps' oratorical efforts were of unusual power, many of his speeches having been published. The best known were "Address on Council of Censors" (1832); "Speech on Tariff Bill" (1844); "Speech on Oregon Question" (1848); his published Vermont decisions are also greatly valued.

EDWARD JOHN PHELPS, like his father, Samuel Shethar Phelps, was a man of unusual legal acumen and was well known on both sides of the Atlantic. He was born at Middlebury, Vermont, July 11, 1822. He was descended from William Phelps, the colonist. His great-grandfather, Edward, gained considerable honor because of his Revolutionary war record, and his grandfather, John, was one of the old-school land owners of Connecticut and a man possessed of considerable wealth. The sketch of his father, Samuel Shethar, appears in this work.

Edward John Phelps had rare advantages for education and advancement. His parents were possessed of ample means and mental attainments far above the average of their day. Besides, young Edward was imbued with a pride of his own, and he was unwilling to wear his family honor without doing his share to maintain and increase, if possible, its prestige; and he succeeded, for at preparatory school and at college he gave promise of his successful future. After graduating from Middlebury college in 1840, and spending one year at Yale Law school, he studied law with that famous democrat, Horatio Seymour, and

was admitted to the bar at Middlebury in 1843.

Mr. Phelps immediately began the practice of his profession in his native town, where he remained two years, when prospects of greater growth in his life work induced him to remove to Burlington. The large number of clients he almost at once gained in the city by the lake was remarkable, and was a high tribute to his worth and his grasp of legal questions.

From the fall of 1851 to the close of President Fillmore's administration he was second comptroller of the treasury; in 1870 was a delegate to the Vermont constitutional conven-



EDWARD J. PHELPS.

tion, his fund of resources making him one of the leaders of that body; in 1877 he presided over the ceremonies of the centennial celebration in commemoration of the battle of Bennington; he was lecturer on medical jurisprudence before the students of Vermont university in 1880, his lectures being considered of such importance that the university authorities had them published in book form; in 1880 was president of the American Bar association, and the same year was the defeated candidate for governor of Vermont on the democratic ticket; in 1881 he was appointed professor of law

at Yule, which chair he held until his death in 1900; in 1882 he was the lecturer on constitutional law at the Boston University law school.

In April, 1882, President Cleveland appointed Mr. Phelps United States minister to Great Britain, in which position he honored his country as well as himself. Middlebury college conferred on him the degree of LL. D. in 1870. One of his addresses delivered before the American Bar association, deserves special mention, entitled "Chief Justice Marshall and the Constitutional Law of his Time" (1879); in 1888 he contributed to the *Nineteenth Century* a series of articles on "The Constitution of the United States."

GILBERT A. DAVIS was born in Chester, Vermont, December 18, 1835. He descends in the fifth generation from William Davis, of Roxbury, Massachusetts, born in England in 1617. His son, Jacob, the fourth child of eight children, born in Roxbury, September 17, 1742, married, October 30, 1764, Dorothy Baker of Dedham, Massachusetts. Stephen, the eldest of eight children of Jacob, born in Roxbury, March 20, 1765, died March, 1821. He married Martha Tileston, and had eight children, of whom Asa, father of Gilbert A., born in Roxbury, August 22, 1789, married October 12, 1815, Mary Hosmer, born in Chester, Vermont, March 21, 1799, daughter of Amos and Sibel (Parker) Hosmer, who came to Chester from Concord, Massachusetts. They had children as follows: Charles L., Martha T., and Gilbert A. Asa Davis came to Chester, Vermont, in 1812, and died in Reading, January 13, 1873, at the home of his son. He was a hatter by trade. His wife died in Chester, March 22, 1872.

Gilbert A. Davis received his education in the district school and at the Chester academy. When fifteen years of age he commenced teaching school in Vermont, and in 1852 went to New Jersey, where for four years he taught in Port Colden and Belvidere, in Warren

county, and at Mount Pleasant, in Hunterdon county. When in Belvidere he began the study of law with J. G. Shipman, a prominent lawyer of the latter place. Upon his return to Chester he continued the study with William Rounds. In 1858-1859 he studied in the office of Washburn & Marsh, at Woodstock, Vermont, and was admitted to the bar in the May term of the latter year in his native county. He remained with Washburn & Marsh until March, 1860. He then settled at Felchville, in Reading, where he first opened a law office, remaining there until June, 1879, when he removed to Windsor, keeping a branch office at Felchville.



GILBERT A. DAVIS

Mr. Davis has been identified politically with the republican party, and often a member of the of the county and State conventions. In 1858 and in 1861 he was assistant clerk of the house of representatives, being assigned to the duty of making up the grand list. He was registrar of the Probate Court of the district of Windsor, Vermont, from December 1, 1864, to February, 1869. In addition to numerous minor offices he was town superintendent of schools, town agent, and auditor of Reading for ten consecutive years, represented the town of Reading in the State legislature in 1872-1874 and 1874-76, serving on the committee on education, of which he was

chairman at the latter session; was State senator in 1876-78, serving as chairman of the committee on education and on the judiciary, and State's attorney for Windsor county from December 1, 1878, to December 1, 1880. By appointment of Governor Peck he compiled the school laws of Vermont in 1875, and compiled and published the "History of Reading" in 1874, a publication requiring much patient research, and by it has been gathered many facts of local interest. He delivered the oration at the centennial celebration of the settlement of Reading, in 1872, and was also orator on the occasion of the centennial celebration of the adoption of the constitution and the name of the State, held at Windsor, August 9, 1877. He was a delegate from Vermont to the antislavery conference held at Chicago in 1887, serving on the committee on credentials, and was acting delegate from Vermont at the Chicago republican convention in 1888. He was identified actively with the public improvements in Windsor; was one of the commissioners to put in the water works, and was trustee of the village in 1889-1890; a director of the Windsor Electric Light company, and the president, treasurer, director, and the largest stockholder in the Windsor Machine company, a successful enterprise established in 1888, and the largest resident taxpayer. Few men have been more often called upon to act as administrator, executor, guardian, trustee. His legal practice took a wide range in the courts of Vermont and New Hampshire, and in the United States courts, and before the pension and treasury departments at Washington. His Vermont Supreme Court practice commenced in 1864, with the case of Town vs. Lamphere, reported 37 Vermont, 52, February term, 1864, and cases with which he has been connected as counsel are to be found in nearly every volume of Vermont reports since, and his briefs show careful study and preparation. He was for many years an officer of the Vermont Historical society, and took an active interest in the preservation of the materials which go to make up the source of the history

of the State and the towns and county where he resided. He was a delegate to the triennial Congregational council held in Worcester, Massachusetts, in 1889. He was a member of the Vermont Commandery, Knights Templar.

For many years Mr. Davis was active in the cause of temperance, having been frequently a speaker at temperance meetings, a member and officer of temperance organizations, the Sons of Temperance and I. O. of G. T., and twice elected a delegate from Vermont to the Right Worthy Grand Lodge of Good Templars.

Mr. Davis was married, April 13, 1862, by the Rev. J. T. Hanna, in the Methodist church at Turner, Du Page county, Illinois, to Delia L., daughter of Lemuel and Mary A. (Weaver) Bolles. Mrs. Davis was born in Grafton, Vermont, January 13, 1840. They have had four children, viz.: Charles Essek, born at Reading, January 10, 1864, died at Turner, Illinois, August 24, 1865; George Gilbert, born at Reading, December 7, 1866, died at Reading, September 5, 1868; Mary Isabella, born at Reading, July 1, 1872, a graduate of Windsor High school, and of Smith college, Northampton, Massachusetts; and Gilbert Franklin, born in Reading, June 19, 1877.

SEWALL FULLAM, of Ludlow, was descended from Francis Fullam, who, at the age of fourteen years, came from his native place (Fullam's Place), near London, England, to Watertown, Massachusetts, in the year 1683. He became prominently identified with the interests of the Massachusetts Bay colony and was for many years judge of the Superior Colonial Court; and also superintendent of the Natick Indians, and for seventeen years occupied a seat in the Colonial legislature. He had one son, named Jacob, whose son, Francis, was the father of Timothy, who was one of the early settlers of the town of Cavendish, Vermont. Timothy had two sons, one of whom, Sewall, was the father of the subject of this sketch. He was for eleven years a preacher in the Methodist church, and after that period

united with the Free Will Baptists. He married Melitable Harris, who also traced her ancestry to Francis Fullam, as the latter's daughter married Nathaniel Harris, who was Mrs. Fullam's great-grandfather. By this marriage there were six children, of whom Sewall was the eldest, and was born in Cavendish, Vermont, April 7, 1799.

Mr. Fullam's early life was spent in his native town, and in Reading, Vermont, where his father removed, having only the advantages of the local schools in which to obtain an education. For the means of obtaining a livelihood he apprenticed himself to learn the



SEWALL FULLAM.

trade of carpenter. Having a fondness for books, he became a great reader, and his leisure hours were spent in study, and being endowed with a retentive memory, he thereby accumulated a greater store of practical knowledge than the majority of men obtain. Mr. Fullam, having a personal acquaintance with Reuben Washburn, a sketch of whose life appears in this work, he borrowed from him law books, and by diligent study at home, soon made himself so proficient that he was able to meet in legal debate any of the brethren of his chosen profession. He became a resident of

Ludlow, April 16, 1828, and besides being engaged at his trade, devoted more or less of his time to legal business until 1836, when he became a member of the Windsor county bar. From this time until his death, November 26, 1876, he continued to reside in Ludlow, and was one of the most prominent members of the bar of his native county, having as his colleagues such men as Judge Jacob Collamer. Hon. Andrew Tracy, of Woodstock, and Hon. Asa Aiken, of Windsor. Mr. Fullam was a man of imposing appearance, being five feet, eleven inches in height, and an average weight of two hundred and twenty-two pounds. He represented Ludlow in the State legislature from 1834 to 1841 inclusive, and a number of sessions was chairman of the judiciary committee; was a member of the constitutional convention of 1843, State's attorney in 1842-1843, 1847-1848. Mr. Fullam was married November 17, 1825, to Miss Eunice Howe Goddard, of Reading, Vermont, and their family consisted of five children, viz.: Elizabeth Goddard, wife of Ervin J. Whitcomb, of Ludlow; Candace Lucretia, widow of Rev. J. O. Skinner, a Universalist minister, residing at Waterville, Maine; Volney Sewall, Benoni Buck, and Eunice Victoria, wife of Marcus A. Spaulding, of Ludlow.

ANDREW TRACY. Thomas Tracy, the grandfather of Andrew, came from Windham, Connecticut, to Hartford, Vermont, in 1776. He had a son James who was born in Windham, January 28, 1760, and on October 22, 1795, married Mercy Richmond, of Barnard. She was born in Taunton, Massachusetts, June 15, 1772. Of their family of five children, Andrew, the second child, was born in Hartford, December 15, 1797. He attended the academies in Royalton and Randolph, and decided to study a profession rather than follow his father's occupation of a farmer. Having completed the preparatory studies, he entered Dartmouth college, where he remained two years. At this time his intimate

friend, Leonard Marsh, who was a classmate, withdrew from the college on account of trouble with his eyes. Mr. Tracy, preferring not to be separated from his friend, left college at the same time. The two went to New York State, where for two years Mr. Tracy taught school in Troy. In September, 1822, at the request of his father he returned to Hartford, and became a student in the law office of George E. Wales, and in 1826 was admitted to the bar. He first practiced his profession in Quechee village, but he soon became interested in politics and was elected a member of the legislature from Hartford in 1833, and for the



ANDREW TRACY.

four succeeding years. On the organization of the whig party he united with the same and engaged earnestly in the discussions which were constantly arising over the political questions of the day, and from his swift and ready way of speaking, from the force and compactness of his expression and the keenness of his sarcasm, he was well qualified for such debates. At the close of the year 1837 he removed to Woodstock and entered into co-partnership with Norman Williams, January 1, 1838, which partnership continued till June 15, 1839. During the month of December,

1840, he formed a co-partnership with Julius Converse, under the firm name of Tracy & Converse, and on August 20, 1849, James Barrett was admitted as partner under the firm name of Tracy, Converse & Barrett. This partnership continued in active professional work till November 25, 1853, when Mr. Tracy retired from the firm. He was elected in 1842 to represent the town of Woodstock in the legislature and was made speaker of the house, which position he held for the two succeeding years. In 1852 he was elected representative to congress, but as neither the climate nor the political atmosphere of Washington suited him, at the close of his term of service he declined a re-election. He was never married. He died in Woodstock, October 28, 1868.

ASHAEL PECK, lawyer, justice, governor, private citizen, the son of Squire and Elizabeth (Gosard) Peck, was born in Royalston, Massachusetts, in 1803. Twenty-one generations of the Peck ancestry traces the family back through Joseph Peck, the Puritan, to John Peck, Bolton, Yorkshire, England. Squire Peck was an agriculturist and in 1806 moved with his family to Montpelier, where he settled on a farm and prospered sufficiently to give his son the advantages of higher education.

Ashael Peck was not considered brilliant as a boy, nor in later years was he looked upon as an orator or a leader of men, but he was a student. His early education was obtained in the district school; his college preparatory work in Washington county Grammar school, and the standing attained in the latter institution enabled him to enter the sophomore class of the University of Vermont. Desiring to perfect himself in the French language, he left the university in 1824, and entered the home of a college president in Canada. Later he studied law in the office of his brother, Nathan Peck, of Hinesburgh; then with Bailey and Marsh, at Burlington, and was admitted to practice in 1832. Mr. Peck's first

law partner was Archibald Hyde, and later he associated himself with D. A. Smalley. In 1851 he was elected judge of the Circuit Court of Vermont, holding the office until 1857, at which date he again took up the practice of his profession. However, being a good reasoner and devoted to the right, the people elected him to the Supreme Bench in 1860 and he continued in that position until his election as governor in 1874.

As governor, Mr. Peck's acts for the most part were such as to endear him to the later generations rather than his contemporaries, yet he made remarkably few enemies. He was safe, quiet, unostentatious, courteous, and without ever lost sight of the final results of his acts. During his incumbency he earned the title of "Father of the house of correction," which institution was established in Vermont through his efforts.

Being a democrat in early life, a free-soiler for a short period, and later one of the originators of the present republican party, he was nevertheless consistent and only changed his opinions after examining a matter in the same thorough manner as he would a law case when on the bench. He always believed in no compromise with the slavery party during the Civil war and the reconstruction period; was profoundly religious and a great Bible student. Mr. Peck never married. He died May 18, 1879.

WILLIAM HARRIS WALKER was born in Windham, Vermont, February 2, 1832, and is the second son of Ephraim and Lydia (Harris) Walker. His mother was a sister of the late Judge William Harris, for whom our subject was named. After attending the Leland academy of Townshend, Vermont, for one term, he entered Black River academy in 1852, where he remained one year. His classical education was obtained at Middlebury college, from which he graduated with full honors, afterward being one of its trustees for many years. He accepted the

position of principal of the Little Falls academy at Little Falls, New York, being engaged there two years. While filling the above position his leisure hours were employed in studying law in the office of Judge Arphaeal Loomis, a prominent attorney of Little Falls. Mr. Walker came to Ludlow in the fall of 1860 and completed his studies with Hon. F. C. Robbins, and became a member of the Windsor county bar in the fall of 1861. The practice of his profession was commenced in Ludlow the year he was admitted. He filled various positions of political and judicial trust in his town and State. He was assistant sec-



WILLIAM H. WALKER.

retary of the senate in 1857, member of the Vermont house of representatives of 1865-1866 and 1884, member of the State senate from Windsor county in 1867-1868, State's attorney in 1874-1876, supervisor of the insane 1878-1880, probate judge of Windsor district from 1878 to 1884, and in the latter year was elected by the legislature a member of the Supreme bench, which position he was obliged to resign in 1887 on account of ill health.

Judge Walker married Ann Eliza, daughter of Dr. Ardain G. Taylor, of Ludlow. Frank A., a son of that union, was born in Londonderry,

Vermont, March 7, 1860. He took an academical course at Black River academy; graduated from Middlebury college in 1832. He studied law with his father and Martin H. Goddard, and became a member of the Windsor county bar in 1836. He married Miss Jennie A. Leland.

LUKE POTTER POLAND, chief justice of Vermont Supreme Court, United States senator, and representative in congress; was born at Westford, Vermont, November 1, 1815, his parents Luke and Nancy (Potter) Poland, having moved from their Massachusetts home into Vermont the previous year. He died at Waterville, Vermont, July 2, 1887.

His early advantages were quite limited, including only a common school education until he was twelve years old, when he entered a country store at Waterville for two years. The three following years he spent with his father on the farm, and in running a saw mill. This latter fact gave him an opportunity to facetiously remark in after life, that he was "educated in a saw mill." He then attended Jericho academy five months. This completed his school advantages but not his education.

His active, attentive mind had received development from many sources. He was physically as well as mentally strong and well developed. The succeeding year he taught school successfully in Morrisville, when he entered upon the study of law in the office of Judge Samuel A. Willard. He was admitted to the bar in 1836, at the age of twenty-one years, and practiced his profession for twelve years in Morrisville. In 1848, though a free soil democrat, he was elected judge of the Supreme Court over a whig competitor by a whig legislature. He subsequently received seventeen successive elections. He was elected chief justice in 1860, and held the office until he resigned in 1865, to accept the appointment to the United States senate.

By intuition apparently, but really by close

and vigorous application, he mastered the broader principles of the law. He was greatly aided in applying them by the knowledge of common affairs early gained, and by his broad discriminating common sense. He was quick to discover the controlling element in the facts of a case, which made a principle applicable or inapplicable. Clear in comprehension he stated his views forcibly and with remarkable clearness. His plain, pointed discriminating charges are today a tradition among the Vermont bar. His presence was fine, his bearing courtly, his self-command great. He had within enough of the natural school master to command and maintain the best of order, even in the heat of conflict.

Hon. James Barrett, many years Judge Poland's associate at the bar and upon the bench, wrote concerning him, "In thirty years conversancy with the bench and bar of Vermont, it has not been my fortune to know any other instance in which the presiding judge in his *niel prima* circuit, has been so uniformly and by the spontaneous acquiescence of the bar, so emphatically the 'end of the law' in all things appertaining to the business of these courts. As judge of the Supreme Court setting in lane his adaptedness to the place was equally manifest. His mastery of the principles of the law, his discriminating apprehension of the principles involved in the specific case in hand, his facility in developing by logical process and practical illustrations the proper applications and results of these principles, are very strikingly carried in the judicial opinions drawn up by him, contained in the Vermont reports. His memory of cases in which particular points have been decided is extraordinary, and his memory is accompanied by a very full and accurate apprehension of the very points, and grounds and reason of the judgment. Some of the cases in which he drew the opinion of the court stand forth as leading cases, and his treatment of the subject involved ranks with the best specimens of judicial disposition."

While in the senate he inaugurated the





greatest work of his congressional career—the revision and consolidation of the statutes of the United States. Hon. Lorin Blodgett said of this work, that it was entitled to “rank quite distinct from, if not higher, than any previous work of the kind known to history.” Both the house and senate accepted the work as it came from his hands, and it became law June 3, 1874.

At the expiration of his term in the senate he was elected as representative to congress and remained there until March, 1875. He concluded the work of the revision of the law begun while in the senate. He was chairman of the committee appointed to investigate the ku-klux-klan outrages. The exposure made, practically broke up the organization and was of inestimable value to southern progress. He was also chairman of the important committee appointed to investigate the transactions of the Credit Mobilier company. The investigation occupied several months, and the unanimous report created much excitement in political and social circles.

During the reconstruction period he was also conspicuous. He was chairman of a special committee raised to investigate the state of affairs in Arkansas. He supported the majority report of the committee in a very able speech. After a sharp fight the report was sustained by a majority of seventy, a result which created no little surprise as the fight had been very vigorous, and it was known that the result would be unpalatable to the executive.

In these ten years of his congressional life, no other member of either branch of congress was so intimately identified with so many important measures. In 1876 he was made chairman of the Vermont delegation to the republican national convention, and in some quarters was suggested for both the offices of president and vice-president.

In 1882 he was again elected to congress and served one term. While not engaged in congressional duties he served his state and town in many representative positions. He

was president of the First National bank of St. Johnsbury, from its organization to the time of his death, a period of nearly thirty years. He was an active and prominent member of the American Bar association, and was chairman of its executive committee from its organization until his death.

Judge Poland married in 1838 Miss Martha S. Page, daughter of Dr. William Page of Waterville, Vermont. He married the second time, the sister of his first wife, Miss Adelia H. Page, who survived him but eight months. Four children were born of the first marriage, three daughters and one son, Martin L., who graduated from West Point, and was captain in the U. S. army. He died in 1878.

Isabel, the youngest daughter, is the only child living, and is the wife of Henry Otis Cushman of Boston.

GUY CHAPLIN NOBLE was born in Franklin, Vermont, October 9, 1839. At the age of eleven years he became a student at Franklin academy, and three years later



GUY C. NOBLE.

entered the classical course at the New Hampton institute at Fairfax, from which institution he graduated, and at the age of nineteen

entered Harvard Law school. He was graduated with the class of 1861, and admitted to the bar at the September term of Franklin county court the same year. Mr. Noble was a thorough student, and applying himself diligently to professional work he soon took high rank at the bar. In October, 1862, the law firm comprised of Mr. Noble and Julian H. Dewey, his brother-in-law, was formed and continued until the death of the latter. Among those associated with him in later years was Edward Curtis Smith, son of the Hon. John Gregory Smith, and the firm of Noble & Smith, when broken by the death of Mr. Noble, May 21, 1889, had a reputation second to few, if any, in the State. Mr. Noble was a stalwart republican, and though possessing no inclination for office has held many positions of honor and trust in the town and State. He was for over twenty-two years attorney for the Central Vermont railroad, and during his professional career was associated with much of the best legal talent of the State.

WILLIAM MORRILL PINGRY, of Weathersfield, was born at Salisbury, New Hampshire, May 28, 1806, being the second son of William and Mary (Morrill) Pingry. He studied law with Samuel I. Wells of his native town, also with the firm of Shaw & Chandler, of Danville, Vermont. He became a member of the Caledonia county bar in June, 1832, and commenced the practice of his profession at Waitsfield, Vermont, where he remained nine years. In 1841 he came to Perkinsville, Vermont, and excepting from November, 1854, to August, 1857, when he was cashier of the White River bank at Bethel, Vermont, always resided there and followed his profession until his death in May, 1885. Mr. Pingry was State auditor of Vermont from 1853 to 1860, was county commissioner, was a member of the Vermont house of representatives in 1860-61 and 1868, and a member of the senate of 1869 and 1870, was assistant judge in Washington and Windsor counties,

and also a member of the constitutional convention of 1850. His heart was warmly enlisted in the anti-slavery cause, with which he was identified at an early period, he being one of the "319" Vermonters who voted for James G. Birney, as a presidential candidate in 1840, when the total liberty party vote in the United States was 7,059. He was a consistent church member and was for forty years deacon of the Baptist church and for almost thirty-five years superintendent of the Sabbath school. The records of the Vermont Baptists for forty-five years or more show that his counsels were sought by that denomination throughout the



WILLIAM N. PINGRY.

State. He served his brethren often as presiding officer of different organizations, also on various boards of trust, on important committees, and at ecclesiastical councils. He was the first president of the Vermont Baptist Sabbath school convention organized in 1870. As a corporate member of the board of trustees of the Vermont academy, he was chosen the first president and held the office till his death. He collected much valuable material for the town history of Weathersfield. A volume entitled, "A Genealogical Record of the Descendants of Moses Pingry of Ipswich,

Massachusetts, so far as Ascertained, Collected and Arranged by William M. Pingry," and published in 1881, is the result of labor extending through seven years.

Mr. Pingry married, first, Lucy G. Brown, and their two children are Mary Helen, wife of Dr. Orvis F. Bigelow of Amherst, Massachusetts, and Gratia Maria, wife of Cyrus C. Boynton of Los Angeles, California. He married, second, Mrs. Lucy C. Richardson, nee Carpenter. Mr. Pingry in 1860 received the honorary degree of Master of Arts from Dartmouth college.

HENRY RUSSELL START, born in Bakersfield, Vermont, December 28, 1845, is the youngest son in a family of six sons of Simon G. and Mary S. (Barnes) Start. His grandfather, Moses Start, was originally from Massachusetts, and was among the early



HENRY R. START.

settlers of Bakersfield. Mr. Start attended the district schools of his native town and was for one year a student at Barre academy, Barre, Vermont, but he finished his academic course at the North academy of Bakersfield, Vermont. During the Civil war he was a mem-

ber of Company A, third regiment, Vermont volunteers. In 1866 he commenced the study of law with M. R. Tyler, of Bakersfield, and became a member of the Franklin county bar at the April term of court in 1867. He commenced the practice of his profession in November, 1867, at Bakersfield, where he continued till January 1, 1881, when he formed a co-partnership with H. G. Edson and A. P. Cross, at St. Albans, under the firm name of Edson, Cross & Start. Mr. Start retained his residence at Bakersfield, and after three years the senior member of his firm retired. The remaining members continued as partners until December 1, 1890, when the partnership was dissolved. In politics Mr. Start has always affiliated with the republican party. He has held various town offices, was State's attorney from December, 1876, to December, 1878, was member of the Vermont senate in 1880, was one of the trustees of the Vermont Reform school from December, 1880, to December, 1888, was presidential elector in 1888, and represented Bakersfield in the legislature of 1890 and was elected speaker of that body. He was elected by the same legislature a member of the Supreme Bench of Vermont and took his oath of office December 1, 1890.

Judge Start married Ellen S., daughter of Stillman and Sarah E. Houghton. She died July 12, 1890.

CHARLES MARSH, one of the brightest of Vermont's noted lawyers, was born in Lebanon, Connecticut, July 10, 1765. Except in patches, Vermont was a wilderness when his parents moved to that State, but the district school was there and in it young Marsh gained his early and college preparatory education. He graduated from Dartmouth in 1780, one of the leaders of his class, and immediately entered upon the study of law. After admission he settled in Woodstock, Vermont, and immediately commenced the practice of his profession. He was industrious, had a strong analytical mind, and soon gained

the confidence of the community and a large business. He was a well-read lawyer and his opinions were regarded as good authority. For fifty years he was a tower of strength in his profession, becoming the senior member of the bar of Vermont. In 1797 President Washington appointed him district attorney of the State and later he was elected to congress as a federalist, serving one term 1815-1817. During his term at Washington he helped to organize the American Colonization society; during his whole business life was a liberal contributor to church and Bible societies; was president of the Vermont Bible society; vice-president of the American Bible society; vice-president of the American Educational society.

During his long career of professional work he was distinguished and respected no less for the excellence of his social character and for his judgment in all public matters, than for his talents and integrity in the business affairs of his chosen vocation. A contemporary said of him: "Possessing brilliant and highly cultivated powers of mind, united with habits of patient and zealous application, Mr. Marsh rose to an eminence in the profession. His style of speaking was elevated and commanding, rich in the higher graces of oratory, and at the same time argumentative and convincing."¹

GEORGE PERKINS MARSH represented his government in foreign courts longer than any other American diplomatist. He was the son of that famous lawyer, Charles Marsh, whose memoir appears in this work, and was born in Woodstock, Vermont, March 15, 1801, and died in Italy July 23, 1882. In his early life he had exceptional educational advantages and early showed his skill in mastering languages. In 1820 he was graduated from Dartmouth and immediately began the reading of law in Burlington. Even before his admission to the bar he became active in politics, but the first prominent public office he

held was in 1835, when he was elected to the Vermont legislature, and at the same time was a member of the Vermont supreme executive council. In 1842 he went as a whig to congress, where he served until 1849, resigning in that year to accept an appointment as minister to Turkey. Mr. Marsh remained there until 1853, during which time he was also sent by his government on a special mission to Greece. In 1857 the governor of Vermont asked him to act on a committee, the object of which was to gain information as to the best methods for the artificial propagation of fish. Mr. Marsh was appointed the first United States minister to the new kingdom of Italy in 1861, and it is said he had a greater personal prestige with the Italian government than any other foreign representative.

Harvard honored itself as well as Mr. Marsh when it conferred on him the degree of LL. D. in 1859; likewise Dartmouth in 1860. In his study of languages special attention was given to those of northern Europe, and it is said his collection of Scandinavian literature, now owned by the University of Vermont, was the largest in the world outside the Scandinavian countries — a strange fact considering his diplomatic work was confined to southern Europe.

As an author Mr. Marsh commanded considerable influence and attention, his most widely known works being: "A Compendious Grammar of Old Northern and Icelandic Language," 1838; "The Camel, His Organization, Habits and Uses, Considered with Reference to His Introduction Into the United States," 1856; "Lectures on English Language," 1861; "Origin and History of the English Language and the Early Literature It Embraces," 1862; American edition of Hensleigh Wedgwood's "Dictionary of English Etymology," 1862; "Man and Nature, or Physical Geography as Modified by Human Action," 1864.

Mr. Marsh was married in 1838 to Caroline Crane, of Berkeley, Massachusetts.

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ERRATA.

Page-Column-Line.

2	1	12	"adopted" should be "adapted."
8	1	24	"civil" should be "civil."
14	2	1	"first jury" should be "jury at first."
14	2	20	"refuse to" should be inserted before "accept."
25	2		"Datha" should be "cash" in title of section 20.
27	1	21	"New" should be inserted before "England."
27	1	22	"New" should be omitted before "England."
28	2		"for" should be "of" before "precedents" in title of Section 25.

Page-Column-Line.

32	2	7	"S" as a reference figure should be inserted after "bonds."
26	1	23	"attorney's" should be "attorneys."
45	2	24	"n" should be "A" preceded by a period, instead of by a dash —.
45	2	note	"in" should be "of" after "opinion" in the foot note.
65	2	note	"Judicial" should be inserted between "Supreme" and "Court."
83	1	25	"prosecution" should be "prosecutions."

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